United States Court of Appeals

for the Second Circuit

APPENDIX

74-2147

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

APPEAL No. 74-2147

HARRY ERNEST RUBENS and JEANNE RUBENS,
Plaintiff-Appellants

v.

NEW YORK STOCK EXCHANGE, INC., KIDDER, PEABODY & CO., INC., MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC.,
Defendant-Appellees

On Appeal from the United States District Court
for the Southern District of New York

JOINT APPENDIX

PETER L. BERGER
Attorney for Plaintiff-Appellants
370 Lexington Avenue
New York, New York 10017

SULLIVAN & CROMWELL
Attorneys for Defendant-Appellee
Kidder, Peabody & Co., Inc.
48 Wall Street
New York, New York 10005

MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Defendant-Appellee
New York Stock Exchange, Inc.
One Chase Manhattan Plaza
New York, New York 10005

BROWN, WOOD, FULLER, CALDWELL & IVEY
Attorneys for Defendant-Appellee
Merrill, Lynch, Pierce, Fenner & Smith, Inc.
One Liberty Plaza
New York, New York 10006

6

PAGINATION AS IN ORIGINAL COPY

CONTENTS OF APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Harry Ernest Rubens and Jeanne Rubens, Plaintiff-Appellants, v. New York Stock Exchange, Inc., Kidder, Peabody & Co., Inc., and Merrill, Lynch, Pierce, Fenner and Smith, Inc., Defendant-Appellees.	UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK Case No. 73 Civ. 3557 Judge: C.L.Brieant,Jr.

INDEX TO THE RECORD ON APPEAL

73 Civ. 3557 Rubens,et ano -v- New York Stock Exchang., Inc.,et al

73 Civ. 355

DATE	PROCEEDINGS	Date O Judgme
Aug 15-73	Filed complaint and issued summons.	
Aug.21-73	Filed summons with marshals return served N.Y. Stock Exchange by J. Foynes 8-16-73,Kidder,Peabody by R.Krantz 8-16-73,and Merrill Lynch Pierce Fenner & Smith by L. Tillem 8-16-73.	
Sep.10-73	Filed stip and order extending time to answer until Sept.25-73. WYATT,J. (N.Y.Stock)	
Sep.10-73	Filed stip and order extending time to answer until Sept.17-73.BRIEANT,J.(Peabody)	
Sep.18-73	Filed stip and order extending time to answer until Oct. 1,1973. BRIEANT,J. (M.L.)	
Sep 18-73	Filed affdvt of Edwin Lee Solot, and notice of motion of deft Kidder, Peabody & Co., Inc. for an order to dismiss complaint. Ret. 9-28-73, Room 706, 9:30 A.M.	
Sep 18-73	Filed memorandum of deft Kidder, Peabody & Co., Inc. in support of motion to dismiss for failure to state a claim or, alternatively to stay action pending arbitration.	
Sep. 21-73	Filed stip. & order extending time for deft. NY Stock Exchange to answer to 10-25-73--Brieant,J.	
Sep. 26-73	Filed stip. & order adjourning deft's motion to 10-9-73-Brieant,J.	
Oct. 4-73	Filed memorandum of deft. Kidder,Peabody & Co. in opposition to motion for summary judgment	
Oct. 5-73	Filed stip. & order extending time of deft. Merrill Lynch Pierce Fenner & Smith to answer to 10-8-73--Brieant,J.	
Oct.9-73	Filed affdvt & Notice of Motion for summary judgment. Ret. 10-9-73, Rm 706.	
Oct.9-73	Filed memorandum in support of motion for summary judgment.	
Oct.9-73	Filed affdvt in support of memo in opposition of deft. Kidder Peabody & Co. Inc. motion to dismiss.	
Oct.9-73	Filed memo in opposition to deft Kidder Peabody & Co. Inc. motion to dismiss.	
Oct. 9-73	Filed memorandum and order-All proceedings in this action (including, but not limited to, all discovery, pltffs' motion for summary judgment and the motion of deft. Kidder,Peabody & Co. to dismiss the complaint) are hereby stayed pending the further order of the Court. The Court will conduct a conference of all counsel appearing in the action on 1-11-74 in Room 2704 at 2:00 P.M., to obtain a status report concerning the action, and to consider whether the stay of proceedings should be continued--So ordered--Brieant,J.-mailed notice	
Oct.10-73	Filed deft's Merrill Lynch ANSWER to paragraph 1 of complaint.	
Dec.6-73	Filed deft Kidder Peabody's affdvt, 9(g) statement & notice of motion for summary judgment. Ret. 2-15-74.	
Feb.6-74	Filed memo of law in support of motion.	
Feb. 8-74	Filed stip. & order extending time of deft. NY Stock Exchange,et ano to 20 days after the determination of pltffs' pending motion for summary judgment or such other date as the Court may establish--Brieant,J.	
Feb.15-74	Filed deft. reply memo in support of motion for summary judgment.	
Mar.6-74	Filed pltff's affdvt & Notice of Motion for Summary Judgment. Ret. 4-5-74.	
Mar. 8-74	Filed pltff's memorandum re arbitration.	
Mar.1 -7	Filed pltff's affdvt in support of memorandum.	
Mar. 18-74	Filed memorandum--that the complaint is dismissed as to deft. Kidder,Peabody & Co.,Inc. only--So ordered--Brieant,J.-mailed notice.	
Mar. 3-74	Filed ANSWER of deft. NY Stock Exchange,Inc.	
Apr. 17-74	Filed notice of appeal by plaintiff from the order dtd: Mar.18-74 granting deft PEABODY & CO., INC. motion for summary judgment. m/n.	
May 8-74	Filed deft. Merrill Lynch notice of motion to dismiss. Ret. 5-20-74.	
May 8-74	Filed deft. memo in support of motion to dismiss.	
May 29-74	Filed pltffs affdvt, 9(G) statement & notice of motion for summary judgment. Ret. 6-5-74. Memo in support included.	
May 29-74	Filed pltffs reply memorandum in opposition to deft's motion.	

////////////////////

"A-C"

BRIEANT, J.

Date	PROCEEDINGS
Jun. -74	Filed defts (Merrill Lynch) reply affdvt in support of motion for summary judgment.
Jun. 1974	Filed defts reply memorandum.
June 3-74	Filed stip. & order adjourning defts' motion for summary judgment to 6-5-74--Brieant,J.
Jun. 5-74	Filed True copy of Stip from USCA withdrawing the appeal, as premature, without costs, to be renewed when USDC enters a final judgment.....Clerk
July 15-74	Filed pltffs memo in support of motion for summary judgment, against (Merrill Lynch).
Jul. 16-74	Filed Memorandum & Order. Based on foregoing & MemoDecision of 3-18-74, summary judgment is granted to deft. Merrill Lynch, etc. & the complt is dismissed as to all parties. Clerk of the Court shall enter final judgment that all relief shall be denied, pursuant to Rule 53(1)...BRIEANT,J. m/n
Jul. 24-74	Filed Judgment & Order that defts N.Y. Stock Exchange & Merrill Lynch have final judgment dismissing the complt as to all parties.....CLERK. m/n
Aug. 14-74	Filed notice of appeal by pltffs from Order Granting defts (Kidder, Peabody & Co. & (Merril, Lynch) motion for summary judgment of March 18, 1974. Respective motions being joined together in a memorandum & order filed 7-16-74. Copies mailed to Milbank Tweed Hadley & McCloy, 1 Chase Manhattan Plaza, NYC 10005, Brown Wood Fuller Caldwell & Ivey, 1 Liberty Plaza, NYC 10006, & Clerk, Court of Appeals.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By _____ Deputy Clerk

D. C. 109 Criminal & Bankruptcy Continuation Sheet

(A-C)"

United States District Court

Southern District of New York

Harry Ernest Rubens	
Jeanne Rubens,	
plaintifs	
V.	Civil Action No.
New York Stock Exchange, Inc.;	
Kidder Peabody & Co., Inc.;	
members Merrill, Lynch, Pierce,	
Fenner & Smith, Inc.	
defendants	

1. This action is brought under the Securities Exchange Act for violation of the fraud sections 10(b); 15(c)(1); 17(a) thereof.

2. Plaintiffs Harry Ernest Rubens and Jeanne Rubens of 2 Sutton Place South, New York City, New York are owners of shares of stocks in U.S. corporations listed on the New York Stock Exchange who have transferred title to various shares of stock to defendant brokerage firms, members of the New York Stock Exchange, Inc. preparatory to selling the equitable interest in said shares.

3. Upon information and belief, defendants are New York corporations doing business in New York City, State of New York.

4. Upon information and belief, the New York Stock Exchange, Inc. is a membership corporation regulating the business practices and conduct of its members, including Kidder Peabody & Co., Inc. and Merrill, Lynch, Pierce, Fenner & Smith, Inc.

As And For A First Cause Of Action

Against Defendant Kidder, Peabody & Co., Inc.

5. Plaintiffs Harry Ernest Rubens and Jeanne Rubens on or about October 4, 1967 delivered 3000 shares of Eastern Gas & Fuel Associates stock owned by plaintiffs, to defendant Kidder, Peabody & Co., Inc. with instructions to sell the equitable interest in said shares, said transaction involving the sale of 3000 shares of Eastern Gas & Fuel Associates at a fixed price.

6. Plaintiffs Harry Ernest Rubens and Jeanne Rubens on or about October 4, 1967 delivered 2900 shares of Detroit Steel Corporation stock owned by plaintiffs, to defendant Kidder, Peabody & Co., Inc with instructions to sell the equitable interest in said shares, said transaction involving the sale of 2900 shares of Detroit Steel Corporation at a fixed price.

7. At the request of said defendant, full title to plaintiffs' shares of stock was transferred to said defendant.

8. At various times in said transactions, interest charges were assessed plaintiffs by said defendant, when the market price of the shares sold rose above the price at which the shares were sold, despite the corresponding identical rise in the value of plaintiffs' shares allegedly being held by defendant.

9. Said interest charges were fraudulently charged to plaintiffs.

10. Said interest charges should be refunded to plaintiffs.

11. During this period various sums from the cash received for the sale of the 5900 shares of stocks sold for plaintiffs' account, were loaned to margin account customers of the defendant at the then current interest rates for margin accounts.

12. The interest received on the loan of the cash from the sale of the 5900 shares of stock was secretly obtained by the defendant and withheld from plaintiffs.

13. The actual shares sold representing plaintiffs' equitable interest were not borrowed by the defendant from others.

14. The cash and interest cited in paragraph 10 above, which was kept by the defendant actually belonged to plaintiffs and was fraudulently and beneficially retained by said defendant.

15. By reason of the wrongful and fraudulent conduct of the aforesaid defendant and the unjust enrichment of the defendant, plaintiffs Harry Ernest Rubens and Jeanne Rubens have been damaged and are entitled to damages with interest from October 4, 1967, from Kidder, Peabody & Co., Inc.

As And For A Second Cause Of Action Against Defendant Merrill, Lynch, Pierce, Fenner & Smith, Inc.

16. Plaintiffs Harry Ernest Rubens and Jeanne Rubens, on or about June 27, 1968 delivered 3000 shares of Great Western Financial Corporation stock owned by plaintiffs to defendant Merrill, Lynch, Pierce, Fenner & Smith, Inc. with instructions to sell the equitable interest of said transaction involving the sale of 3000 shares of Great Western Financial Corporation at a fixed price.

17. At the request of said defendant, full title to the aforesaid plaintiffs' shares of stock was transferred to said defendant.

18. At various times in said transaction, interest charges were assessed plaintiffs by said defendant, when the market price of the shares sold rose above the actual price at which the shares were sold despite the corresponding identical rise in the value of plaintiffs' shares allegedly being held by defendant.

19. Said interest charges were fraudulently charged to plaintiffs.

20. During this period various sums received for the sale of the 3000 shares of stock sold for plaintiffs' account were loaned to margin account customers of said defendant at current interest rates for margin accounts.

21. The interest received from the loan of the cash received from the sale of the 3000 shares of stock was secretly obtained by said defendant and withheld from plaintiffs.

22. The actual shares sold representing plaintiffs equitable interest were not borrowed by said defendant from others.

23. The cash and interest recited in paragraph 21 above which was kept by said defendant actually belonged to plaintiffs and was fraudulently and beneficially retained by said defendant.

24. By reason of the wrongful and fraudulent conduct of the aforesaid defendant and the unjust enrichment of the defendant, plaintiffs Harry Ernest Rubens and Jeanne Rubens have been damaged and are entitled to damages with interest from June 27, 1968 from the aforesaid defendant Merrill, Lynch, Pierce, Fenner & Smith, Inc.

As And For A Third Cause Of Action

By The Plaintiffs Against All Defendants

25. On or about July, 1967 and before and since that date, defendants acting in concert have engaged in a conspiracy to commit wrongful and fraudulent practices involving the sale of the equitable interest of stocks, legal title to which has been passed by plaintiffs to their defendant brokers, all members of the New York Stock Exchange, Inc.

26. Said sales of the equitable interest in plaintiffs' shares involve the sale of substantially identical shares at a fixed price.

27. Title to the plaintiffs shares involved in said sale, were passed by the plaintiffs to the respective defendant brokers at the request of said defendants.

28. The defendants conspired to permit the broker defendants to assess interest charges against the plaintiffs, when the market price of said shares rose above the selling price despite the corresponding identical rise in the value of plaintiffs shares.

29. As a part of said conspiracy, at various times in said transactions the various sums from cash received for the sale of the said shares sold for plaintiffs' account were loaned to margin account customers of the defendant brokers there involved acting in concert at current interest rates for margin accounts.

30. As a part of said conspiracy, the cash received by defendant brokers, acting in concert for the sale of the said shares was withheld from plaintiffs during said transactions.

31. As a part of said conspiracy, the interest received from the loan of the cash received by defendant brokers, acting in concert, from the sale of the said shares, was secretly received and was kept by the defendant brokers there involved and withheld from the plaintiffs.

32. The actual shares of stock sold representing plaintiffs' equitable interest were not borrowed by defendant brokers there involved from others.

33. Said cash and interest received cited in paragraph 28 belonged to plaintiffs and have been wrongfully and fraudulently retained by defendant brokers.

34. By reason of the foregoing, plaintiffs are entitled to an injunction restraining defendants from further continuing the aforesaid acts of conspiracy and the aforesaid fraudulent practices.

As And For A Fourth Cause Of Action

By Plaintiffs Against All Defendants

35. Plaintiffs repeat and allege paragraphs 24 to 34 above.

36. As a further act of conspiracy and to further carry out defendants' fraudulent and wrongful practices, defendant brokers arranged to print letters of acceptance which were imposed upon all defendants' customers, before defendants would carry out instructions to sell the equity in plaintiffs shares, said printed letters of acceptance containing clauses allegedly authorizing defendant brokers to carry out the fraudulent and wrongful practices, and to compel arbitration of all disputed points, and under certain conditions, by persons appointed by the defendant New York Stock Exchange, Inc. itself.

37. Said printed letters of acceptance were never signed by defendant brokers in plaintiffs' presence, nor was a signed copy given plaintiffs.

38. Said printed letters of acceptance have been and/or will be used by defendants to attempt to prevent litigation of plaintiffs' rights herein.

39. By reason of the foregoing, plaintiffs are entitled to an injunction restraining defendants from enforcing the aforesaid letters of acceptance, which since and before July, 1967 have been imposed upon all customers of defendant brokers, and for an order requiring defendant brokers to supply a new letter of acceptance eliminating the requirement for arbitration and especially arbitration before persons selected by the New York Stock Exchange, Inc., and compelling defendants to execute all letters of acceptance in the presence of plaintiffs and supplying plaintiffs with executed copies of the same.

WHEREFORE plaintiffs demand:

A) A judgment against the defendant Kidder, Peabody & Co., Inc. on the first cause of action and in favor of plaintiffs Harry Ernest Rubens and Jeanne Rubens for $25,000 together with interest from October 4, 1967.

B) A judgment against the defendant Merrill, Lynch, Pierce, Fenner & Smith, Inc., on the second cause of action and in favor of plaintiffs Harry Ernest Rubens and Jeanne Rubens for $25,000 together with interest since June 27, 1968.

C) A preliminary and permanent injunction against all the defendants on the third cause of action restraining defendants from carrying out further fraudulent acts of the conspiracy including the withholding of cash received from the sale of the equitable interest in shares of defendants' customers and the assessment of interest charges against defendants' customers when the market value of the shares rises above the selling price of the same.

D) For a preliminary and permanent injunction against all defendants on the fourth cause of action, restraining defendants from further use of printed forms of acceptance by customers which enable defendants to impose compulsory arbitration on its customers and especially arbitration before persons selected by the New York Stock Exchange, Inc.

and for an order requiring defendants to supply defendants' customers with new printed forms of acceptance giving defendants' customers the option of settling of claims by arbitration and compelling defendant brokers to execute same in the presence of said customers and to supply all of its customers with an executed copy.

Peter L. Berger
Attorney for Plaintiffs
370 Lexington Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY ERNEST RUBENS, et ano., :

Plaintiffs, : 73 Civ. 3557 (Brieant, J.)

-against- :

NEW YORK STOCK EXCHANGE, INC., et al., : NOTICE OF MOTION

Defendants. :

- -x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Edwin Lee Solot, Esq., sworn to September 13, the undersigned shall move this Court before the Hon. Charles L. Brieant, Jr. in Room 706 of the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York, on September 28, 1973 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to F.R.Civ.P. 12(b)(6) dismissing the complaint for failure to state a claim upon which relief can be granted or, alternatively, for an order pursuant to Section 3 of the Arbitration Act, 9 U.S.C. § 3, staying this action as to defendant Kidder, Peabody & Co. Incorporated pending arbitration.

Dated: New York, New York

September 17, 1973

Yours, etc.,

SULLIVAN & CROMWELL

By MARVIN SCHWARTZ

(A Member of the Firm)

Attorneys for Defendant

Kidder, Peabody & Co. Incorporated

48 Wall Street

New York, New York 10005

(212) HAnover 2-8100

752

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY ERNEST RUBENS, et ano., :

Plaintiffs, : 73 Civ. 3557 (Brieant, J.)

-against- :

NEW YORK STOCK EXCHANGE, et al., : AFFIDAVIT

Defendants. :

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

EDWIN LEE SOLOT, being duly sworn, deposes and says:

1. I am an attorney and a member of the Legal and Tax Department of defendant Kidder, Peabody & Co. Incorporated ("Kidder, Peabody"), a corporation which has its principal place of business in New York. I represent Kidder, Peabody in the arbitration initiated by plaintiffs against Kidder, Peabody and presently the subject of hearings before a five-member Board of Arbitration selected pursuant to the Constitution and Rules of the New York Stock Exchange after submission by the parties. I make this affidavit in support of defendant Kidder, Peabody's motion to dismiss the complaint or, alternatively, for an order staying the action pending arbitration.

2. The books and records of Kidder, Peabody show that plaintiff Harry Ernest Rubens (who I understand is a member of the New York bar) and his wife plaintiff Jeanne Rubens first opened a joint cash account with Kidder, Peabody for the purchase and sale of securities in September

1963. Copies of their new account card and joint account agreement are annexed hereto as Exhibit A. Mr. and Mrs. Rubens also opened individual cash accounts.

3. In September 1967, plaintiffs each added general (margin) trading accounts to their group of accounts with Kidder, Peabody. Copies of the agreements whereby these accounts were opened are annexed hereto as Exhibit B.

4. In or about October 1967, plaintiffs deposited in their respective general (margin) accounts a combined total of 3,000 shares of Eastern Gas and Fuel Associates common stock and 2,900 shares of Detroit Steel Corporation common stock. As authorized by the Rubens' agreements, the shares were placed in "street name" in accordance with good business practice. These shares were then "locked up in segregation" for the accounts of the Rubens as per New York Stock Exchange Rule 402.70 since the shares had at that time (and at all times thereafter while still held by Kidder, Peabody for the benefit of the Rubens) a market value in excess of 140 percent of the debit balances in the accounts. (Rule 402.60 prohibits locking up in bulk segregation any securities registered in customers' names. Since Kidder utilizes the bulk method the Rubens' shares had to be placed in street name.)

5. At or about the same time, plaintiffs instructed Kidder, Peabody to sell short on their behalf a like number of shares of each of the two common stocks. These transactions were of a type referred to in the trade as a "short sale against the box" since the customer has "long" shares in his general (margin) account or "the box" identical to those he is selling short in his short account.

6. In a short sale against the box, the broker cannot use the customer's "long" shares to make delivery to the buyer's broker on the other side of the short sale since to do so would cause the transaction to be a long sale rather than a short sale and could jeopardize whatever tax advantages the customer expects to receive by being long and short the same stock. The broker must therefore borrow, on his customer's behalf, the shares needed for delivery to the buyer. Depending on the availability of like stock, the broker might borrow the shares intra-office or from another broker, and the loan must be fully collateralized in cash by the current market value of the borrowed securities. The cash proceeds of the short sale are thus not available to the customer who sold short against the box since they are utilized to borrow the stock. The customer may, if he so desires, be advanced cash on the security of his long position in his general (margin) account (to the extent permitted by the current applicable margin requirements of NYSE Rule 431 and by Regulation T of the Board of Governors of the Federal Reserve System) but this creates a debit balance or increases an existing one upon which interest must be charged under NYSE Rule 369(1), which prohibits broker-members from entering into arrangements with customers "whereby special and unusual rates of interest are given or money advanced upon unusual items for the purpose of obtaining or retaining business".

7. If the securities sold short go up in price, and until the time when cutomer delivers securities to replace the securities borrowed, his broker is required to "mark to the market" by increasing the cash collateral for the borrowed securities so that the market value of the stock loan is covered in cash at all times. This "mark" is added

to the debit balance (upon which the customer must pay interest) in the "long" account as required by the margin maintenance requirements of NYSE Rule 431(c)(4). Conversely, if the market value of the securities borrowed declines, the short seller's broker marks to the market in the short seller's favor, thus reducing the debit balance in the long account. In the event the market price falls below the short sale price, any debit balance which may exist in the customer's long account is reduced by the differential between the short sale price and the market price.

8. The proceeds of the Rubens' short sales of Eastern Gas and Fuel Associates and Detroit Steel Corporation amounted to $241,900. A schedule of the short sales is annexed hereto as Exhibit C. Prior to their delivery of securities to replace those they borrowed to effect their short sales, Kidder, Peabody marked to the market. Whenever market prices exceeded the short sale prices, Kidder, Peabody debited the Rubens' general (margin) accounts in a like amount and charged them interest at the then-prevailing rate, as required by NYSE Rule 369(1) and as the Rubens had agreed under the agreements annexed hereto as Exhibit B, which provide, in pertinent part:

> "Debit balances, including all advances and expenditures in your opinion necessary or advisable in respect of transactions hereunder, shall be payable on demand and shall bear interest in accordance with your usual custom, together with any extra rates caused by credit conditions and other charges to cover your credit and other services."

The total interest charged to Mr. Rubens as a result of marks to the market was $315.39 and to Mrs. Rubens was $324.53, as itemized in Exhibit D annexed hereto. These charges were identified on the Rubens' monthly statements as they were

incurred. At no time did the Rubens request that they be advanced cash on the security of their long positions in these same stocks; had they done so, it would have increased their debit balances upon which interest would have been due.

9. On March 12, 1968, the Rubens purchased Eastern Gas and Fuel Associates shares at a price lower than the short sales price and used them to "cover" the short sales by replacing the shares originally borrowed to effect the short sales. See monthly statements for March 1968 annexed hereto as Exhibit E. Considering the short sales alone, these transactions resulted in a "profit" for the Rubens of $28,100 less purchase and sale expenses and interest costs. Thereafter the Rubens continued to maintain, and increased the amount of, their long position in Eastern Gas and Fuel Associates in their general (margin) accounts.

10. On January 16, 1970, the Rubens covered their short positions in Detroit Steel Corporation by delivering their long shares. See monthly statements for January 1970 annexed hereto as Exhibit F. Since the value of the Detroit Steel Corporation stock had declined from the price at which the short sales were executed, considering the short sales alone these transactions resulted in a "profit" for the Rubens of $29,000, less purchase and sale expenses and interest costs.

11. Kidder, Peabody is not aware of the overall tax consequences and after-tax profit for the Rubens as a result of their having engaged in these "short against the box" transactions.

12. Although the first interest charges were incurred in October 1967, it was not until January 1970 that the Rubens raised any question as to the validity of the interest charges incurred. See letter annexed hereto as Exhibit G.

13. After further correspondence between the parties (not relevant for present purposes) in which Kidder, Peabody attempted to explain the basis for the interest charges incurred, Mr. and Mrs. Rubens in September 1970 filed separate actions against Kidder, Peabody in the Civil Court of the City of New York, Small Claims Part, County of New York, each seeking judgment of $300 plus costs. On November 9, 1970, the court granted the motion of Kidder, Peabody to stay the actions until May 3, 1971 pending arbitration pursuant to the written agreements of the parties. On May 3, 1971, the court dismissed the actions for lack of prosecution. See complaints, subpoena, and notice from Small Claims Part, annexed hereto as Exhibit H. See also customer agreements annexed as Exhibit B, which provide in pertinent part:

> "Any controversy arising out of or relating to accounts of or transactions with or for the undersigned or to this agreement or the breach thereof shall be settled by arbitration in accordance with the rules of either the American Arbitration Association or the New York Stock Exchange as the undersigned [customer] may elect. If the undersigned does not make such election by registered mail addressed to you [Kidder, Peabody] at your main office in New York City within five days after demand by you that such election be made, then you make such election. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof."

14. On May 17, 1971, the Rubens lodged a complaint with the Inquiries & Complaints Department of the New York Stock Exchange. See letter annexed hereto as Exhibit I.

This complaint was the subject of an inquiry to Kidder, Peabody but did not result in any action being taken.

15. The Rubens commenced two new actions in the Small Claims Part in the latter part of May 1971. On June 24, 1971, the court again granted a motion by Kidder, Peabody to stay the actions, until October 1972, pending arbitration. In October 1972 the court dismissed the actions for failure to prosecute. See complaints and subpoena annexed hereto as Exhibit J.

16. In November 1971, Kidder, Peabody received an inquiry from the New York State Department of Law regarding a complaint lodged by Mr. Rubens. This complaint has not resulted in any action being taken. See letter dated November 9, 1971 from Mr. Okun to Kidder, Peabody annexed hereto as Exhibit K.

17. In October 1972 Kidder, Peabody received notice from the New York Stock Exchange that Mr. and Mrs. Rubens had filed a statement of claim against the firm which had been submitted for arbitration through the facilities of the Exchange. Mr. and Mrs. Rubens' statement of claim seeks recovery of $9,950 apparently consisting not only of the interest charges incurred by the Rubens described above, but also interest income based on the amount of cash generated by the short sales (which cash they did not become entitled to until they replaced the stock which they had borrowed to effect their short sales). Plaintiffs' statement of claim also complains that they were "compelled" by Kidder, Peabody to sign the agreements annexed hereto as Exhibit B, and raises questions concerning the manner of execution and delivery of these agreements by Kidder, Peabody. See letter dated October 12, 1972 from Mr. McGuone to Kidder, Peabody and statement of claim annexed hereto as Exhibit L.

18. Thereafter Kidder, Peabody filed its reply, and Mr. and Mrs. Rubens together with Kidder, Peabody executed the Exchange's submission form by which the parties agreed, among other things, as follows:

> "We, the undersigned parties, hereby submit to arbitration by Arbitrators selected in accordance with Paragraph IV.B.I. of the within submission the matter in controversy between us and all the matters, claims and counterclaims relating thereto, set forth in the statements of the parties, annexed hereto, and we agree to abide by and perform any award rendered pursuant to this agreement, and we do further agree that a judgment of any court having jurisdiction thereof may be entered on said award and to that end do voluntarily submit ourselves to the jurisdiction of said "court".

See Submission annexed hereto as Exhibit M.

19. After extensive discovery of Kidder, Peabody's books and records by plaintiffs, the hearing commenced before a panel of five arbitrators on May 31, 1973 and plaintiffs presented their case. The hearing was continued on June 5, 1973, at which time Kidder, Peabody presented the first part of its case, with extensive cross-examination by plaintiffs. At the conclusion of the June 5 hearing, the parties and the arbitrators agreed to October 17, 1973 as the next hearing date.

20. Plaintiffs are not presently customers of Kidder, Peabody and have not maintained any accounts through the facilities of Kidder, Peabody since 1971.

EDWIN LEE SOLOT

Sworn to before me this
13th day of September 1973.

Notary Public

NAME. (PLEASE TYPE)

MISS

MRS. Jeanne Rubens

MR. Harry Ernest Rubens and

TYPE OF ACCOUNT

CASH X

MARGIN

DATE 9/20/63

REGISTERED REPRESENTATIVE Lanyi

ARE YOU A CITIZEN OF THE U.S.A. yes : OVER 21 YEARS OF AGE? yes

HOME ADDRESS

TELEPHONE

New York Address: 2 Sutton Place S, NY22, Pl 8 1559

OCCUPATION AND NAME OF CONCERN WHERE EMPLOYED

Patent Lawyer self employed

TELEPHONE see above

IF MARRIED WOMAN (GIVE HUSBAND'S NAME & BUSINESS)

OCT 8 1963

Housewife

Please enter social security or identifying number here

061	07	8066

BANK REFERENCE OR PREVIOUS BROKERAGE ACCT.

NAME South Norwalk Office, Conn.

ADDRESS City Trust Co

SPECIMEN SIGNATURE

X Harry Ernest Rubens

X Jeanne Rubens

INSTRUCTIONS

In the case of joint accounts in the names of a husband and wife, the husband's number should be given. In the case of other joint accounts, only one social security number should be reported. In the case of custodian accounts for minors, it is the number of the minor which should be reported. A corporation, bank, broker, institution, etc, will indicate its identifying number.

REVERSE SIDE TO BE FILLED IN BY REGISTERED REPRESENTATIVE

FOR OFFICE USE ONLY

INITIAL TRANSACTION(S)

ACCOUNT # U21-5653-27

REMARKS

INTRODUCED BY

DATE A/C OPENED July, 16, 1957

AVER. BAL. four figurs balance

REMARKS Signatures submitted agree favorably loans on a secured basis has been entirely satisfactory

satisfactory

LIMITED POWER TO

UNLIMITED POWER TO

ACCOUNT GUARANTEED BY

MARGIN AGREEMENT

LOAN AGREEMENT sent Downtown 9/23/63

JOINT ACCOUNT AGREEMENT OK gg

VERIFIED BY AAG

CHECKED BY JJW

APPROVED BY

SALESMAN

MANAGER

PARTNER

E21-10-62

JOINT ACCOUNT
FOR CASH ACCOUNTS

Sept 23 1963

KIDDER, PEABODY & Co.
NEW YORK N. Y. BOSTON MASS.

Dear Sirs:

The undersigned agree to be jointly and severally liable for the joint account which they have with you or which you are to open for them, and they agree to be jointly and severally liable for any and all debit balances therein, and for any and all other obligations in respect thereof.

Each of us has full power and authority to act in all respects with reference to this account, either individually or in our joint names, and you are authorized to act upon any instructions of any of us with reference to this account. Any and all reports, statements, notices, demands or other communications from you to any of us shall be deemed given to all of us.

All moneys, securities, contracts for securities or credit balances, rights of every nature and other property now or hereafter held or carried by you for any one or more of the undersigned, in any account or otherwise, shall be subject to and included in the general lien for the discharge of all debit balances or other obligations of the joint account to you, however and whenever arising. Such lien shall be in addition to and not in substitution of the rights and remedies you otherwise have, and the enforcement thereof shall not affect or alter the liability of any of us in respect of this joint account. You may at any time, without notice to the undersigned, appropriate and apply to the payment or partial payment of any or all debit balances or other obligations with respect to this joint account any and all moneys or credit balances now or hereafter held or carried by you for any one or more of the undersigned in any account or otherwise.

This account is an account with right of survivorship, so that on the death of any of us the survivor or survivors shall be the sole owner or owners of this account, but the estate of any such decedent shall not thereby be relieved of any liability to you in respect of this account existing at the date of such death or arising out of a transaction consummated or in process of consummation at that date.

Very truly yours,

Harry Ernest Rubens

Jeanne Rubens

Witness:

Natalie F. Lyman

Exhibit A

Kidder, Peabody & Co.
Incorporated

ACCOUNT NO. U23-0270-31
DATE September 29, 1967
VERIFIED BY _____ SALESMAN
CHECKED BY _____ MANAGER
APPROVED BY _____ VOTING STOCKHOLDER

Jeanne Rubens

HOME ADDRESS 2 Sutton Place South, New York, NY 10002
TELEPHONE

YOU A C ZEN OF THE U.S.A.? yes OVER 21 YEARS OF AGE? yes
RELATED TO A KIDDER, PEABODY OFFICER OR EMPLOYEE? no

CUPATION ND NAME OF CONCERN WHERE EMPLOYED
Housewife

IF MARRIED WOMAN, GIVE HUSBAND'S NAME & BUSINESS:
Harry Ernest Rubens - U23-0276-3

CIAL SECU TY OR IDENTIFICATION NUMBER

BANK REFERENCE OR PREVIOUS BROKERAGE ACCT.
NAME Account # U21-5588-3

ADDRESS

he case of joint account of husband and wife, give the husband's number.
he case of her joint accounts, give only one social security number. A cor-
ation, ban- broker, trust or estate, institution, etc, will insert its tax identifi-
ion number

CUSTOMER'S AGREEMENT

T Kidder, Peabody & Co.
Incorporated

The undersigned agrees with respect to all accounts that he has or may have with you, w ether individual, joint or as guarantor:

Any t.ansaction hereunder shall be subject to appli ible law and to the constitution, rules, r gulations, customs and usages of the exchange or m rket (and its clearing house, if any) w ere e.ecuted.

Debit balances, including all advances and expenditures in your opinion necessary or a visable in respect of transactions hereunder, shall be payable on demand and shall bea i st in accordance with your usual custom, together with any extra rates caused by credit c nditions and other charges to cover your credit and other services.

You are to hold as security for payment of all liabilities to you however arising, all cash, c dits, securities or other property now or hereafter held or carried by you in all accounts o the undersigned, with the right on your part in your discretion and without notice to trans- f any thereof interchangeably among any of such accounts. Additional security will be de- p sited with you as you may from time to time require. You shall have the right at any time v thout notice to apply any such cash or credits to payment of any debit balances or other o ligations of the undersigned. Whenever in your discretion you deem it necessary for your p otection, you may sell any such securities or other property, b in any thereof of which any a count of the undersigned may be short or cancel or close out y outstanding order or con- t act, all without demand for additional security or payment, notice or advertisement. Any s ch transaction may be made in your discretion on any exchange or market or by public or p ivate transaction and on any credit or delivery terms, and, other than in a private transaction, y u may participate therein as the other party for your own account, free from any right of r demption. In any event the undersigned shall remain liable for any deficiency.

You may at any time, without notice, pledge or repledge any such securities or other property, separately or with other property, for any amount due you from the undersigned or any greater amount, without retaining in your possession or control a like amount of similar securities or other property.

You are authorized to transfer into your name or that of any depository or its nominee any securities now or thereafter held by you in any accounts of the undersigned, to deposit any securities held in such accounts in any stock clearing corporation, central certificate service, and to hold under your system of bulk segregation of customer's securities any securities held in such accounts classified as free or excess margin securities under the rules and regulations of the New York Stock Exchange.

Reports of the execution of orders and statements of account made by you shall be deemed conclusive if not objected to in a writing delivered to you within two days or ten days, respectively, after submitted.

All sell orders shall be designated as "long" or "short", and designation of a sell order as "long" shall constitute a certification that the undersigned owns the security and, if the security is not in your possession, either (1) it is being forwarded to you or (2) it is impracticable to deliver such security to you forthwith but the undersigned will deliver it as soon as possible.

Any communication, whether by mail, telegraph, telephone, messenger or otherwise, sent to the undersigned at the address given to you from time to time shall upon dispatch constitute personal delivery to me. Notice given hereunder shall not operate as a waiver of any of your rights hereunder or obligate you to proceed only in conformity therewith.

No provision hereof may be waived or modified except by a writing signed by one of your duly authorized officers or employees.

Any controversy arising out of or relating to accounts of or transactions with or for the undersigned or to this agreement or the breach thereof shall be settled by arbitration in accordance with the rules of either the American Arbitration Association or the New York Stock Exchange as the undersigned may elect. If the undersigned does not make such election by registered mail addressed to you at your main office in New York City within five days after demand by you that such election be made, then you may make such election. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

The undersigned represents that no one other than the undersigned has any interest in any account of the undersigned with you, except to the extent that the undersigned shall have specifically advised you thereof in writing prior to the opening of such account.

This agreement shall remain in force until delivery of written revocation thereof by the undersigned to you, or vice versa; if revoked, it shall continue effective as to prior transactions, and shall inure to the benefit of your successors and assigns.

Date 9/29/67 Signature Harry Ernest Rubicam

To Kidder, Peabody & Co.
Incorporated

The undersigned authorizes you to lend to yourself as broker, or to others, any securities now or hereafter carried on margin by you for the account or under the control of the undersigned.

This authorization shall remain in force until delivery of written revocation thereof by the undersigned to you and thereafter with respect to any prior transactions and shall inure to the benefit of your successors and assigns.

Date 9/29/67 Signature Harry Ernest Rubicam

ACCOUNT NO. U23-0277-31

DATE September 29, 1967

VERIFIED BY _____ SALESMAN

CHECKED BY _____ MANAGER

APPROVED BY _____ VOTING STOCKHOLDER

Kidder, Peabody & Co.

Incorporated

NAME

MISS

MRS.

MR.

Harry Ernest Rubens

HOME ADDRESS

2 Sutton Place South, New York, NY 10002

TELEPHONE

ARE YOU A CITIZEN OF THE U.S.A.? yes OVER 21 YEARS OF AGE? yes

RELATED TO A KIDDER, PEABODY OFFICER OR EMPLOYEE? no

OCCUPATION AND NAME OF CONCERN WHERE EMPLOYED

PATENT LAWYER

IF MARRIED WOMAN, GIVE HUSBAND'S NAME & BUSINESS:

SOCIAL SECURITY OR IDENTIFICATION NUMBER

BANK REFERENCE OR PREVIOUS BROKERAGE ACCT.

NAME U21-5589-3

ADDRESS

In the case of joint account of husband and wife, give the husband's number. In the case of other joint accounts, give only one social security number. A corporation, broker, trust or estate, institution, etc, will insert its tax identification number

CUSTOMER'S AGREEMENT

To Kidder, Peabody & Co.

Incorporated

The undersigned agrees with respect to all accounts that he has or may have with you, whether individual, joint or as guarantor:

Any transaction hereunder shall be subject to applicable law and to the constitution, rules, regulations, customs and usages of the exchange or market (and its clearing house, if any) where executed.

Debit balances, including all advances and expenditures in your opinion necessary or advisable in respect of transactions hereunder, shall be payable on demand and shall bear interest in accordance with your usual custom, together with any extra rates caused by credit conditions and other charges to cover your credit and other services.

You are to hold as security for payment of all liabilities to you however arising, all cash, credits, securities or other property now or hereafter held or carried by you in all accounts of the undersigned, with the right on your part in your discretion and without notice to transfer any thereof interchangeably among any of such accounts. Additional security will be deposited with you as you may from time to time require. You shall have the right at any time without notice to apply any such cash or credits to payment of any debit balances or other obligations of the undersigned. Whenever in your discretion you deem it necessary for your protection, you may sell any such securities or other property, buy in any thereof of which any account of the undersigned may be short or cancel or close out any outstanding order or contract, all without demand for additional security or payment, notice or advertisement. Any such transaction may be made in your discretion on any exchange or market or by public or private transaction and on any credit or delivery terms, and, other than in a private transaction, you may participate therein as the other party for your own account, free from any right of redemption. In any event the undersigned shall remain liable for any deficiency.

You may at any time, without notice, pledge or replege any such securities or other property, separately or with other property, for any amount due you from the undersigned or any greater amount, without retaining in your possession or control a like amount of similar securities or other property.

You are authorized to transfer into your name or that of any depository or its nominee any securities now or thereafter held by you in any accounts of the undersigned, to deposit any securities held in such accounts in any stock clearing corporation, central certificate service, and to hold under your system of bulk segregation of customer's securities any securities held in such accounts classified as free or excess margin securities under the rules and regulations of the New York Stock Exchange.

Reports of the execution of orders and statements of account made by you shall be deemed conclusive if not objected to in a writing delivered to you within two days or ten days, respectively, after submitted.

All sell orders shall be designated as "long" or short", and designation of a sell order as "long" shall constitute a certification that the undersigned owns the security and, if the security is not in your possession, either (1) it is being forwarded to you or (2) it is impracticable to deliver such security to you forthwith but the undersigned will deliver it as soon as possible.

Any communication, whether by mail, telegraph, telephone, messenger or otherwise, sent the undersigned at the address given to you from time to time shall upon dispatch constitute personal delivery to me. Notice given hereunder shall not operate as a waiver of any of your rights hereunder or obligate you to proceed only in conformity therewith.

No provision hereof may be waived or modified except by a writing signed by one of your duly authorized officers or employees.

Any controversy arising out of or relating to accounts of or transactions with or for the undersigned or to this agreement or the breach thereof shall be settled by arbitration in accordance with the rules of either the American Arbitration Association or the New York Stock Exchange as the undersigned may elect. If the undersigned does not make such election by registered mail addressed to you at your main office in New York City within five days after demand by you that such election be made, then you may make such election. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

The undersigned represents that no one other than the undersigned has any interest in any account of the undersigned with you, except to the extent that the undersigned shall have specifically advised you thereof in writing prior to the opening of such account.

This agreement shall remain in force until delivery of written revocation thereof by the undersigned to you, or vice versa; if revoked, it shall continue effective as to prior transactions, and shall inure to the benefit of your successors and assigns.

Date 9/29/67 Signature ✓ Jeanne Rubens

To Kidder, Peabody & Co.
Incorporated

The undersigned authorizes you to lend to yourself as broker, or to others, any securities now or hereafter carried on margin by you for the account or under the control of the undersigned.

This authorization shall remain in force until delivery of written revocation thereof by the undersigned to you and thereafter with respect to any prior transactions and shall inure to the benefit of your successors and assigns.

Date: 9/29/67. Signature ✓ Jeanne Rubens

Jeanne Rubens U23-0279-31

1/2/68 500 Eastern Gas & Fuel
sold short 71

1/19/68 500 Eastern Gas & Fuel
sold short 75

1/18/68 1500 Detroit Steel
sold short 22

Jeanne Rubens U23-0279-31

10/5/67 300 Eastern Gas & Fuel
sold short 62 1/2

10/11/67 100 Eastern Gas & Fuel
61 1/2

10/11/67 100 Eastern Gas & Fuel
61 1/2

Harry Rubens U23 0277-31

10/5/67 300 Eastern Gas & Fuel
sold short 62 1/2

10/11/67 100 Eastern Gas & Fuel
sold short 61 1/2

10/11/67 100 Eastern Gas & Fuel
sold short 61 1/2

Harry Rubens U23-0277-31

1/2/68 500 Eastern Gas & Fuel
sold short 71

1/19/68 500 Eastern Gas & Fuel
sold short 75

1/18/63 1400 Detroit Steel
sold short 22

Exhibit C

Harry Rubens

10/25/67	Int 6 25% to Oct 19 as of 10/19/67	1.77
11/24/67	Int 6 25% to Nov 19 as of 11/19/67	4.05
01/24/68	Int 6 75% to Jan 19 as of 01/19/68	22.79
02/21/68	Int 6 75% to Feb 19 as of 02/19/68	21.01
03/26/68	Int 6 75% to Mar 19 as of 03/19/68	16.36
05/22/68	Int 7 25% to May 19 as of 05/19/68	.56
06/24/68	Int 7 25% to Jun 19 as of 06/19/68	10.67
07/25/68	Int 7 25% to Jul 19 as of 07/19/68	13.43
09/19/68	Int 7 25% to Sep 16 as of 09/16/68	4.01
11/26/68	Int 7 00% to Nov 16 as of 11/16/68	18.63
12/10/68	Int 7 00% to Dec 03 as of 12/03/68	13.47
12/31/68	Int 7 25% to Dec 16 as of 12/16/68	6.81
01/21/69	Int 7 50% to Jan 08 as of 01/08/69	44.42
01/24/69	Int 7 75% to Jan 16 as of 01/16/69	16.61
02/19/69	Int 7 75% to Feb 16 as of 02/16/69	61.62
03/19/69	Int 7 75% to Mar 16 as of 03/16/69	48.68
04/23/69	Int 8 25% to Apr 16 as of 04/16/69	10.11
05/27/69	Int 8 25% to May 16 as of 05/16/69	.36
1970	None	
1971	None	
TOTAL		$ 315.39

Mrs. Jeanne Rubens

10/25/67	Int 6 25% to Oct 19 as of 10/19/67	1.77
11/24/67	Int 6 25% to Nov 19 as of 11/19/67	4.05
01/24/68	Int 6.75% to Jan 19 as of 01/19/68	28.73
02/21/68	Int 6 75% to Feb 19 as of 02/19/68	54.53
03/26/68	Int 6 75% to Mar 19 as of 03/19/68	30.05
06/24/68	Int 7 25% to June 19 as of 05/19/68	1.77
07/25/68	Int 7 25% to Jul 19 as of 07/19/68	12.15
9/19/68	Int 7 25% to Sep 16 as of 09/16/68	4.26
10/25/68	Int 7 00% to Oct 16 as of 10/16/68	4.99
11/26/68	Int 7 00% to Nov 16 as of 11/16/68	19.88
12/10/68	Int 7 00% to Dec 3 as of 12/03/68	14.87
12/31/68	Int 7 25% to Dec 16 as of 12/16/68	7.25
12/31/68	Int 7 25% to Dec 16 as of 12/16/68	7.29
12/31/68	Int 7 25% to Dec 16 as of 1/16	6.85
01/21/69	Int 7 50% to Jan 08 as of 01/08/69	47.62
01/24/69	Int 7 75% to Jan 16 as of 01/16/69	17.74
02/19/69	Int 7 75% to Feb 16 as of 02/16/69	35.62
03/19/69	Int 7 75% to March 16 as of 03/16/69	20.51
04/23/69	Int 8 25% to Apr 16 as of 04/16/69	4.34
05/27/69	Int 8 25% to May 16 as of 05/16/69	.26
1970-71	None	
		$ 324.53

35

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE, NEW YORK, N.Y. 10005 — OCCIDENTAL CENTER, OLIVE AT 12TH STREET, LOS ANGELES, CALIF. 90015 — 75 FEDERAL STREET, BOSTON, MASS. 02101 — 100 BUSH STREET, SAN FRANCISCO, CALIF. 94104 — 123 SOUTH BROAD STREET, PHILADELPHIA, PA. 19109 — 2 PEACHTREE STREET N.W., ATLANTA, GA. 30303 — 33 SOUTH CLARK STREET, CHICAGO, ILL. 60603 — FIRST NATIONAL BANK BLDG., 1401 ELM STREET, DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT NUMBER	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM. OR SEGREG
03-29-68 PAGE 1	U21 5589 31				BALANCE FEB 29 1968			20 80	
		03 25		100	ROSLYN INDUSTRIES	DEL			
		03 25	100		SIRCOR SCIENTIFIC	REC			
								20 80	
					CLOSING BALANCE				
					SECURITY POSITIONS				
			20		AMER HOME PRDS2 CVPR				
			500		BANFF OIL LTD				
			45		EASTERN GAS&FUEL				
			237		GETTY OIL CO				
			100		GLEN ALDEN 2.25 CVPR				
			420		HOME OIL CO A	"			
			300		HOME OIL CO B	"			
			500		IMPERIAL CORP AMER				
			140		O M I MINERALS				
			500		SCIENTIFIC IND INC				
			100		SIRCOR SCIENTIFIC				
			446		TEXAS ESTRN TRANSMIS				

MARY ERNEST RUBENS
2 SUTTON PLACE SO
NEW YORK 2 N Y

8272

...the statement for income ... A charge will be made ...

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account maintained for you under Section 4 (F) (6) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of this corporation is available for your personal inspection at its offices, or a copy of it will be mailed upon request.

...credit balance represents funds payable upon demand which, although properly accounted for on our books of record, are not segregated and may be used in the conduct of this corporation's business.

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE, NEW YORK, N.Y. 10005 · OCCIDENTAL CENTER, OLIVE AT 12TH STREET, LOS ANGELES, CALIF. 90015 · 75 FEDERAL STREET, BOSTON, MASS. 02101 · 100 BUSH STREET, SAN FRANCISCO, CALIF. 94104 · 123 SOUTH BROAD STREET, PHILADELPHIA, PA. 19109 · 2 PEACHTREE STREET N.W., ATLANTA, GA. 30303 · 33 SOUTH CLARK STREET, CHICAGO, ILL. 60603 · FIRST NATIONAL BANK BLDG., 1401 ELM STREET, DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING 3-26-68 PAGE 1 — ACCOUNT NUMBER U23 0276 31

HARRY ERNEST RUBENS
2 SUTTON PLACE SO
NEW YORK
NEW YORK 10022

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM OR SEGREG
			BALANCE FEB 29 1968			4335 11	
03 12	15		EASTERN GAS&FUEL	60 1/4	917 79		1
03 12	1500		EASTERN GAS&FUEL	60	90675 00		67
			TO COVER SHORT SALE			91592 79	
03 13		1515	EASTERN GAS&FUEL	DEL			
			TO COVER SHORT SALE			125 00	
03 13	DIV	500	VULCAN MATERIALS -	REC			
03 14	500		RTS BANFF OIL LTD			9797 21	
03 15			FR SHORT AC		50 00		
03 18			DIV 500 VULCAN MATERIAL DUE 2 15			216 75	
03 21	DIV	1445	DETROIT STEEL CORP		210 00		
03 25			TO SHORT AC		724 50		
03 25			CK MORGAN GTY TR SUB84BANFF OIL		16 36		
03 26			INT 6 75 % TO MAR 19 AS OF 03/19/68				
03 26	84		BANFF OIL LTD	REC			
03 27		500	RTS BANFF OIL LTD VAL 3/26	DEL			
03 28			TO SHORT AC		1400 00		
			CLOSING BALANCE			12073 21	68
			SECURITY POSITIONS				6
	84		BANFF OIL LTD				134
	1445		DETROIT STEEL CORP				

$275

Upon receipt the statement for income tax purposes. A charge will be made for additional copies.

If this is a margin account, this is a combined statement of your general account and of the special miscellaneous account maintained for you under Section 4 (c) (6) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of the corporation is available for your personal inspection at its office, or a copy of it will be mailed upon request.

Any free credit balances represent funds payable upon demand which, although [illegible] presumed for an [illegible], are not segregated [illegible] be used in the conduct of this corporation's business.

37

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

33 SOUTH CLARK STREET
CHICAGO, ILL. 60603

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT NUMBER	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM. OR SEGREG
03-26-68 PAGE 2	U23 0276 31		1515		EASTERN GAS&FUEL				1515
			500		VULCAN MATERIALS				500

0276

Your retain this statement for income tax purposes. A charge will be made for additional copies.

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account maintained for you under section 4 (F) (6) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of this corporation is available for your personal inspection at its office, or a copy of it will be mailed upon request.

Any free credit balances represents funds payable upon demand which, although properly recorded on our books of record, are not segregated and may be used in the conduct of this corporation's business.

38

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

33 SOUTH CLARK STREET
CHICAGO, ILL. 60603

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT NUMBER	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM OR SEGREG
					BALANCE FEB 29 1968			129390 00	
3-28-68 PAGE 1	U23 0277 31	03 13	1515		EASTERN GAS&FUEL	REC	91592 79		
					TO COVER SHORT SALE		9797 21		
					MARK TO MKT		210 00		
HARRY ERNEST RUBENS		03 15			DIV140CDETROIT STEEL				
2 SUTTON PLACE SO		03 18			DUE 3 15			210 00	
NEW YORK N Y 10022					MARK TO MKT			1400 00	
		03 25			MARK TO MKT				
		03 28						29400 00	
					CLOSING BALANCE				
					SECURITY POSITIONS				
				1400	DETROIT STEEL CORP				

9277

Please retain the statement for income tax purposes. A charge will be made for additional copies.

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account maintained for you under Section 4 (F) (6) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of the corporation is available for your personal inspection at its office, or a copy of it will be mailed upon request.

Any free credit balance represents funds payable upon demand which, although properly accounted for on our books of record, are not segregated and may be used in the conduct of this corporation's business.

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

33 SOUTH CLARK STREET
CHICAGO, ILL. 60603

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT NUMBER	DATE	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
12-27-68 PAGE 1	U21 5568 31	03 19		CASH LIEU FRAC			20 80
				GETTY OIL			
		03 25	100	ROSLYN INDUSTRIES	DEL		
		03 25		SIRCOR SCIENTIFIC	REC		
				CLOSING BALANCE			20 80
				SECURITY POSITIONS			
			300	AMER HOME PRD 2 CVPR			
			500	BANFF OIL LTD			
			540	EASTERN GAS&FUEL			
			237	GETTY OIL CO			
			140	GLEN ALDEN 2.25 CVPR			
			300	HOME OIL CO A	"		
			300	HOME OIL CO B	"		
			500	IMPERIAL CORP AMER			
			200	WILLIAM H RORER INC			
			500	SCIENTIFIC IND INC			
			100	SIRCOR SCIENTIFIC			
			400	TEXAS ESTRN TRANSMIS			

MRS JEANNE RUBENS
2 SUTTON PLACE SO
NEW YORK 22 N Y

[illegible] the statement for income [illegible]. A charge will be made [illegible] request.

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account maintained for you under Section 4 (f) (6) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of this corporation is available for your personal inspection at its offices, or a copy of it will be mailed upon request.

Any free credit balance represents funds payable upon demand which, although properly accounted for on our books of record, are not segregated and may be used in the conduct of this corporation's business.

140

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE, NEW YORK, N.Y. 10005
OCCIDENTAL CENTER, OLIVE AT 12TH STREET, LOS ANGELES, CALIF. 90015
75 FEDERAL STREET, BOSTON, MASS. 02101
100 BUSH STREET, SAN FRANCISCO, CALIF. 94104
123 SOUTH BROAD STREET, PHILADELPHIA, PA. 19109
2 PEACHTREE STREET, N.W., ATLANTA, GA. 30303
33 SOUTH CLARK STREET, CHICAGO, ILL. 60603
FIRST NATIONAL BANK BLDG., 1401 ELM STREET, DALLAS, TEXAS 75202

LEDGER

D ENDING	ACCOUNT NUMBER	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
03-28-68 PAGE 1	U23 0278 31				BALANCE FEB 29 1968		1530 68	
		03 12	15		EASTERN GAS&FUEL	60 1/4	917 79	
		03 12	1100		EASTERN GAS&FUEL TO COVER SHORT SALE	60	66495 00	
		03 12	300		EASTERN GAS&FUEL TO COVER SHORT SALE	60	18135 00	
		03 12	100		EASTERN GAS&FUEL TO COVER SHORT SALE	60	6045 00	
		03 13		1515	EASTERN GAS&FUEL	DEL		91592 79
		03 13	DIV	500	TO COVER SHORT SALE VULCAN MATERIALS			125 00
		03 14	500		RTS BANFF OIL LTD	REC		9891 21
		03 15			FR SHORT AC		50 00	
		03 18			DIV 500 VULCAN METERIAL DUE 2 15			225 00
		03 21	DIV	1500	DETROIT STEEL CORP		225 00	
		03 25			TO SHORT AC		724 50	
		03 25			CK MORGAN GTY TR SUB 84BANFF OIL		30 05	
		03 26			INT 6 75 % TO MAR 19 AS OF 03/19/68			
		03 26	84		BANFF OIL LTD	REC		
		03 27		500	RTS BANFF OIL LTD VAL 3/26	DEL		
		03 28			TO SHORT AC		1500 00	
					CLOSING BALANCE			6180 98

MRS JEANNE RUBENS
2 SUTTON PLACE SO
NEW YORK N Y 10022

9278

Please retain this statement for income tax purposes. A charge will be made for additional copies.

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account maintained for you under Section 4 (F) (6) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of this corporation is available for your personal inspection at its offices or a copy of it will be mailed upon request.

Any free credit balance represents funds payable upon demand which, although properly accounted for on our books of record, are not segregated and may be used in the conduct of this corporation's business.

41

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

33 SOUTH CLARK STREET
CHICAGO, ILL. 60603

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT NUMBER	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM. OR SECREG
12-28-68 PAGE 2	023 0278 31				SECURITY POSITIONS				
			84		BANFF OIL LTD				84
			1500		DETROIT STEEL CORP				1500
			1515		EASTERN GASCFUEL				1415
			500		VULCAN MATERIALS				500

$270

...this statement for income ... A charge will be made ... request.

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account maintained for you under Section 4 (F) (6) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of this corporation is available for your personal inspection at its offices, or a copy of it will be mailed upon request.

Any free credit balance represents funds payable upon demand which, although properly accounted for on our books of record, are not segregated and may be used in the conduct of this corporation's business.

41a

Kidder, Peabody & Co. INCORPORATED

IN ACCOUNT WITH

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

33 SOUTH CLARK STREET
CHICAGO, ILL. 60603

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT NUMBER	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM OR SEGREC
03-29-68 PAGE 1	023 0279 31				BALANCE FEB 29 1968			131490 00	
		03 13	1515		EASTERN GASLFUEL	REC	91592 79		
					TO COVER SHORT SALE		9891 21		
					MARK TO MKT		225 00		
		03 15			DIV15CDETROIT STEEL			225 00	
MRS JEANNE RUBENS		03 18			DUE 3 15			1500 00	
2 SUTTON PLACE SO					MARK TO MKT				
NEW YORK N Y 10022		03 25			MARK TO MKT			31506 00	
		03 28			CLOSING BALANCE				
					SECURITY POSITIONS				
				1500	DETROIT STEEL CORP.				

S25h

Please retain this statement for income tax purposes. A charge will be made for additional copies.

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account maintained for you under Section 4 (f) (2) of Regulation T issued by the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.

A financial statement of this corporation is available for your personal inspection at its offices, or a copy of it will be mailed upon request.

Any free credit balance represents money payable upon demand which, although properly accounted for on our books of record, are not segregated and may be used in the conduct of this corporation's business.

Exhibit E

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

EDGER

ACCOUNT ENDING	ACCOUNT	TYPE	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	OWN OR GREO
[illegible]	02	362 77							21060	
			01 1	30[illegible]		[illegible]	STKTR			
			01 1	5[illegible]		AMER HOME PROD[illegible]	STKTR			
			01 1	4Z4[illegible]		BAUFE OIL LTD	STKTR			
			01 1	207		EASTERN GASFUEL	STKTR			
			01 1	140		GETTY OIL CO	STKTR			
			01 1	300		GLEN ALDEN 2.25 PR	STKTR			
			01 1	300		HOME OIL CO A	STKTR			
			01 1	500		HOME OIL CO B	STKTR			
			01 1	400		IMPERIAL CORP AM	STKTR			
			01 1	125		ROKER AMERICAN INC	STKTR			
			01 1	500		SCIENTIFIC ENVIR I	STKTR			
			01 1	100		SCIENTIFIC IND I	STKTR			
			01 1	410		SIMCOR SCIENTIFI	STKTR			
			01 1	500		TEXAS E STRN TRAI 11.5%	STKTR			
			01 1	100		VULCAN MATERIALS	FEE			
						EASTERN GASFUEL				
						VALUE 01 21	REC			
			01 1	47		EASTERN GASFUEL				
						VALUE 01 21			21060	47
						CLOSING BALANCE				
						SECURITY POSITIONS				
					100	AMER HOME PROD[illegible] PR				
					144	BAUFE OIL LTD				
					4 772	EASTERN GASFUEL				
					37	GETTY OIL CO				
					147	[illegible] PR				

ACCOUNT
JNT
& BOND ACCOUNTS
NO LOT SHOWN
ACCOUNT

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT				DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	CC O SEC
[illegible] Paul	2	02	52207	3	31	500		[illegible] OIL CO A				
						300		ONE OIL CO E				
						500		IMPERIAL OXY AMER				
						400		KOREA APPRAIN INC				
						125		SCIENTIFIC ENVIRON				
						500		SCIENTIFIC IND INC				
						100		SINGER SCIENTIFIC				
						400		TEXAS LSTRN TRANSMI				
						500		VULCAN MATERIALS				

[illegible] ACCOUNT
[illegible] ACCOUNT
[illegible] ACCOUNT
[illegible] ACCOUNT
[illegible] ACCOUNT

45

N ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

DGER

PERIOD ENDING	ACCOUNT	TYPE	R.R.
PREVIOUS PAGE 1	1-2 306-2-2	0	50

05 [illegible] PLACE 15
[illegible] PLACE 50
[illegible] K N Y 10022

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
			BALANCE DEC 1969			20 [illegible]
			FR [illegible]			21034 68
01 10			THE [illegible] ACCT NUMB		210 48	
01 19		200	AMER HOME PROD 2 C R	STKTR		
01 19		324	BAKER OIL LTD	STKTR		
01 19		4245	EASTERN GASFUEL	STKTR		
01 19		237	GETTY OIL CO	STKTR		
01 19		140	GLEN ALDEN 2.25 C R	STKTR		
01 19		300	HOUSE OIL CO A	STKTR		
01 19		300	HOUSE OIL CO B	STKTR		
01 19		500	IMPERIAL CORP AME	STKTR		
01 19		400	KAISER [illegible] CHEM INC	STKTR		
01 19		125	SCIENTIFIC ENVIR	STKTR		
01 19		500	SCIENTIFIC IND II	STKTR		
01 19		100	SYRCUR SCIENTIFIC	STKTR		
01 19		400	TEXAS EASTN TRANS IS	STKTR		
01 19		500	VULCAN MATERIALS	STKTR		
01 19			CLOSING BALANCE			00

ACCOUNT
BOND ACCOUNT
ACCOUNT
ACCOUNT
PTION ACCOUNT
ON ACCOUNT

[illegible] brought, this is a combined statement of your general account and of a spe[illegible] miscellaneous account [illegible]
[illegible] under Section [illegible] of Regulation T issued by the Board of Governors [illegible] the Federal Reserve [illegible]
[illegible] as carried at the [illegible] amount on request by Regulation T is available for pe[illegible] portion upon request. [illegible]

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005
OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101
110 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109
2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670
FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING	ACCOUNT		TR	R.R.	DATE		BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT		CREDIT		COMM. OR SEGREG.
									BALANCE DEC 31 1969		21039	68	3039		
[illegible] 1	12	9 652	3	50	01	16			TO CASH AC				18000	0	
					01	19		1500	DETROIT STEEL CORP	DEL				C	
									CLOSING BALANCE						

[illegible] PEKENS
[illegible] PLACE SO
[illegible] YORK N Y 10022

[illegible] ACCOUNT
[illegible] BOND ACCOUNT
[illegible] ACCOUNT
[illegible] ACCOUNT
[illegible] ACCOUNT

If [illegible] a margin account [illegible] a combined statement of your general account and of a special miscellaneous account [illegible] (F) [illegible] of Regulation T issued by the Board of Governors of the Federal [illegible] separate account as required by Regulation T is available for your inspection upon [illegible] request.

A financial statement of this corporation is available for your personal inspection at its offices, or a copy of it will be mailed upon request.

47

IN ACCOUNT WITH
Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE, NEW YORK, N.Y. 10005
OCCIDENTAL CENTER, OLIVE AT 12TH STREET, LOS ANGELES, CALIF. 90015
75 FEDERAL STREET, BOSTON, MASS. 02101
100 BUSH STREET, SAN FRANCISCO, CALIF. 94104
123 SOUTH BROAD STREET, PHILADELPHIA, PA. 191..
2 PEACHTREE STREET N.W., ATLANTA, GA. 30303
ONE FIRST NATIONAL PLAZA, CHICAGO, ILL. 60670
FIRST NATIONAL BANK BLDG., 1401 ELM STREET, DALLAS, TEXAS 75202

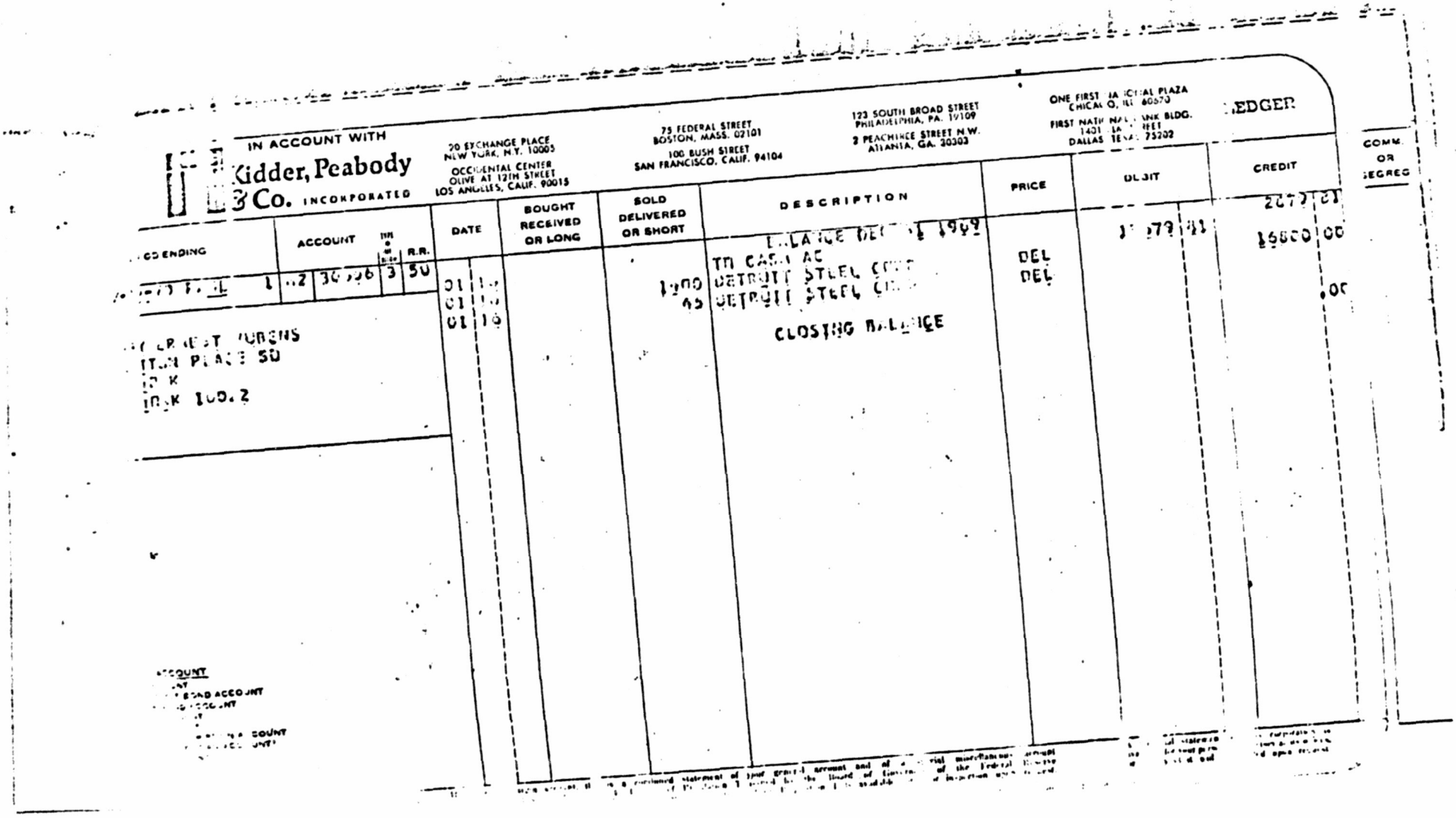
LEDGE[illegible]

... ENDING	ACCOUNT	TYPE	R.R.	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM. OR SEGREG.
							BALANCE DEC 31 196[illegible]			1300 . 50	
[illegible] 1	[illegible] .0692	4	50	01 16	1500		DETROIT STEEL CORP	REC	15000 00		
							CLOSING BALANCE			.00	

[illegible] RUBENS
[illegible] PLACE 5D
[illegible] N Y 10022

...ACCOUNT
...BOND ACCOUNT
...ACCOUNT
...ACCOUNT
...ACCOUNT

If this is a margin account, this is a combined statement of your general account and of a special miscellaneous account ... (F) of Regulation T issued by the Board of Governors of the Federal Reserve ... separate account as required by Regulation T is available for your inspection upon request. A financial statement of this corporation is available for your personal inspection at its offices, or a copy of it will be mailed upon your request.



Kidder, Peabody & Co. INCORPORATED

IN ACCOUNT WITH

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

ONE FIRST [illegible] PLAZA
CHICAGO, ILL. 60670

FIRST NATIONAL BANK BLDG.
1401 [illegible] STREET
DALLAS TEXAS 75202

LEDGER

...CO ENDING	ACCOUNT	INV. #	R.R.
[illegible]	...2 36 [illegible]6	3	50

...ERT RUBENS
...TH PLACE SD
...K
...K 100.2

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
			BALANCE DEC [illegible] 1969		1 [illegible]79 41	2079 41
01 [illegible]		1500	TR CASH AC	DEL		15600 00
01 [illegible]		45	DETROIT STEEL CORP	DEL		.00
01 19			DETROIT STEEL CORP			
			CLOSING BALANCE			

...CCOUNT
...NT
...ROAD ACCOUNT
...COUNT
...T
...
...
...COUNT
...COUNT

COMM. OR SEGREG

IN ACCOUNT WITH
Kidde[illegible], Peabody & Co. INCORPORATED

20 EXCHANGE PLAC[illegible]
NEW YORK, N.Y. 100[illegible]
OCCIDENTAL CENT[illegible]
OLIVE AT 12TH STRE[illegible]
LOS ANGELES, CALIF. 9[illegible]015

75 FEDERAL STREET
BOSTON, MASS. 02101
100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD S[illegible]
PHILADELPHIA, PA. 1[illegible]
2 PEACHTREE STREET N.W.
ATLANTA, GA. 30[illegible]

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670
FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDG[illegible]

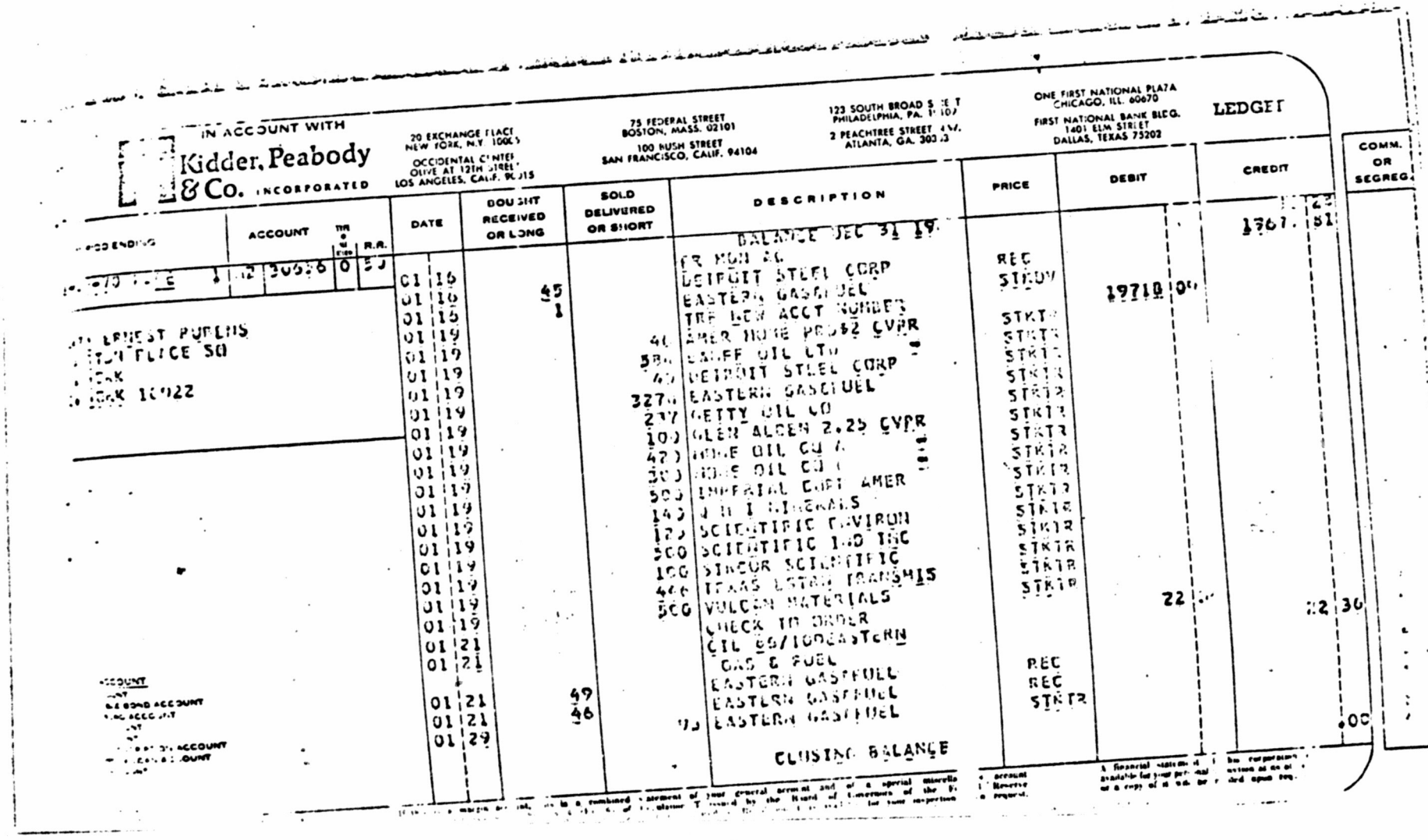
[illegible] ENDING	ACCOUNT			R.R.	DATE		BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM. OR SEGREG.
									BALANCE DEC 31 19			16[illegible] 00	
1-[illegible]	[illegible]	30656	4	50	01	16	1400		DETROIT STEEL CORP	REC	16800 0[illegible]		
									CLOSING BALANCE			[illegible]00	

[illegible] ROBERT RUBENS
[illegible] PLACE SO
[illegible]
[illegible] YORK 10022

[illegible]OUNT
[illegible]
[illegible] BOND ACCOUNT
[illegible] ACCOUNT
[illegible]
[illegible] ACCOUNT
[illegible] ACCOUNT

If [illegible] a margin account, [illegible] is a combined statement of your general account and of a special miscell[illegible] account [illegible] of Regulation T issued by the Board of Governors of the F[illegible] Reserve [illegible] Regulation [illegible] available for your inspection [illegible] request.

A financial statement [illegible] this corporation [illegible] available for your per[illegible] of a copy of it will be [illegible] upon re[illegible]



IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19107

2 PEACHTREE STREET, N.W.
ATLANTA, GA. 30303

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

PERIOD ENDING | ACCOUNT | TYPE OF ACCT. | R.R.

12 30536 0 SJ

ERNEST PUBLIS
TON PLACE SO
ORK
ORK 10022

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM. OR SEGREG.
			BALANCE DEC 31 19			1767.51	
01 16			FR MON AG	REC			
01 16	45		DETROIT STEEL CORP	STKDV	19710 00		
01 15	1		EASTERN GAS&FUEL				
01 19			TRF LCH ACCT NUMBER	STKTR			
01 19		41	AMER HOME PROD 2 CVPR	STKTR			
01 19		58	GULF OIL LTD	STKTR			
01 19		45	DETROIT STEEL CORP	STKTR			
01 19		327	EASTERN GAS&FUEL	STKTR			
01 19		237	GETTY OIL CO	STKTR			
01 19		100	GLEN ALDEN 2.25 CVPR	STKTR			
01 19		42	HOME OIL CO A	STKTR			
01 19		300	HOME OIL CO	STKTR			
01 19		500	IMPERIAL OIL AMER	STKTR			
01 19		140	J M I MINERALS	STKTR			
01 19		125	SCIENTIFIC ENVIRON	STKTR			
01 19		500	SCIENTIFIC IND INC	STKTR			
01 19		100	SINCOR SCIENTIFIC	STKTR			
01 19		446	TEXAS EASTN TRANSMIS	STKTR			
01 19		500	VULCAN MATERIALS	STKTR			
01 19			CHECK TO ORDER		22 00	12 36	
01 21			OIL 99/100EASTERN				
01 21			GAS & FUEL				
01 21	49		EASTERN GAS&FUEL	REC			
01 21	46		EASTERN GAS&FUEL	REC			
01 29		95	EASTERN GAS&FUEL	STKTR			.00
			CLOSING BALANCE				

ACCOUNT
[illegible] BOND ACCOUNT
[illegible] ACCOUNT
[illegible] ACCOUNT
[illegible] ACCOUNT

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CALIF. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE STREET N.W.
ATLANTA, GA. 30303

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670

FIRST NATIONAL BANK BLDG
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

ACCOUNT	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM. OR SEGREG.
	01 19							
	01 19	40			STKTR			
	01 19	504			STKTR			
	01 19	45			STKTR			
	01 19	370			STKTR			
	01 19	237			STKTR			
	01 19	100			STKTR			
	01 19	420			STKTR			
	01 19	200			STKTR			
	01 19	500			STKTR			
	01 19	140			STKTR			
	01 19	125			STKTR			
	01 19	500			STKTR			
	01 19	100			STKTR			
	01 19	446			STKTR			
	01 19	500			STKTR			
	01 29	95					1971 09	
				CLOSING BALANCE				
				SECURITY POSITIONS				
		40						
		504						5
		45						
		370						
		237						
		100						
		420						

52

IN ACCOUNT WITH

Kidder, Peabody & Co. INCORPORATED

20 EXCHANGE PLACE
NEW YORK, N.Y. 10005

OCCIDENTAL CENTER
OLIVE AT 12TH STREET
LOS ANGELES, CAL. 90015

75 FEDERAL STREET
BOSTON, MASS. 02101

100 BUSH STREET
SAN FRANCISCO, CALIF. 94104

123 SOUTH BROAD STREET
PHILADELPHIA, PA. 19109

2 PEACHTREE ST. N.W.
ATLANTA, GA. 30303

ONE FIRST NATIONAL PLAZA
CHICAGO, ILL. 60670

FIRST NATIONAL BANK BLDG.
1401 ELM STREET
DALLAS, TEXAS 75202

LEDGER

ACCOUNT	TYPE	R.R.	DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	COMM OR SEGR
				500		[illegible]				
				500		IMPERIAL CHEMICAL				
				140		[illegible] MINERALS				
				125		SCIENTIFIC ENVIRON				
				500		SCIENTIFIC IND INC				
				100		SIRCUR SCIENTIFIC				
				446		TEXAS ESTRN TRANSMIS				
				500		VULCAN MATERIALS				

ACCOUNT
[illegible] BOND ACCOUNT
[illegible] ACCOUNT
[illegible] ON ACCOUNT
[illegible] ACCOUNT

[illegible] this is a combined statement of your general account and of a special miscellaneous account [illegible] Regulation T issued by the Board of Governors of the Federal Reserve [illegible] A financial statement [illegible] available for your inspection at [illegible] or a copy of it will be mailed upon request.

HARRY ERNEST RUBENS

CONNECTICUT 06880
GORHAM ISLAND
WESTPORT
TEL 203 · 227-9158

TEL: 201 PLAZA 1558-9
2 Sutton Place South. New York City
NEW YORK 10022

January 19,1970

Kidder, Peabody & Co.
330 Madison Ave
New York, N. Y. 10017

Att: Marvin Jay Price

Re: Accounts: N2/30656
N2/30652

Gentlemen:

In connection with our short against the box transactions, in which we delivered 3000 shares of Eastern Gas & Fuel, and 2945 shares of Detroit Steel to your firm, we would like an explanation for the various interest charges.

Our attorney advises us that no basis for an interest charge exists in a transaction which is fully secured and without financial risk to your firm.

We would like to know the actual mechanism of title change to our stock. Were our shares registered in the firm name and deposited in the firm pool of stocks from which the shorted stock was withdrawn?

Also we would like to know why the cash received from the sale is retained by your firm. Can it be that your firm actually borrows this money to finance other margin accounts for which a further interest charge is made?

Your explanations will be of interest to us.

Yours very truly,

Harry Ernest Rubens
President

Civil Court of the City of New York

111 Centre Street, New York, N. Y. 10013

Small Claims Part, County of New York

Telephone 374-8121

To Kaplan Foreman & Co., Inc
20 Sutton Place
New York, NY

Harry Ernest Rubens, 2 Sutton Place,South,New York,NY

ask judgment in this Court against you for $ 300.00 together with costs upon the following claim:

In account N2-30656-3-50 withheld $300.00 interest charges not incurred

There will be a hearing upon this claim....., at 6:30 P.M., in the Small Claims Part Courtroom, Ground Floor, 111 Centre Street, County of New York.

You must appear and present your defense and any counterclaim you may desire to assert at the hearing at the time and place above indicated (a corporation must be represented by an attorney). Unless you do, judgment will be entered against you by default. If your defense or counterclaim, if any, is supported by witnesses, account books, receipts, or other documents, you should produce them at the hearing. The clerk, if requested, will issue subpoenas for witnesses without fee therefor.

If you admit the claim, but desire time to pay, you must appear personally on the day set for the hearing, state to the court that you desire time to pay and show your reasons for desiring time to pay.

☞ **Corporation defendants must appear by attorney. See Section 321A—C.P.L.&R.**

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Court this

.....day of.....,

JOHN B. McINERNEY
Chief Clerk of the Court

Attorney for Plaintiff.....

NOTE: If you desire a jury trial, you must, at least one day before the day upon which you have been notified to appear, file with the clerk of the Small Claims Part a demand for a trial by jury. At that time you will have to make an affidavit specifying the issues of fact which you desire to have tried by a jury, and stating that such trial is desired and demanded in good faith. To obtain a jury trial you will have to pay a jury fee of $12.50 for a jury of six and you will have to file an undertaking in the sum of $50 or deposit said sum in cash, to secure the payment of any costs that may be awarded against you. Under the law, the court may award $25 additional costs to the plaintiff if a jury trial is demanded and a verdict is rendered against you.

BRING THIS NOTICE WITH YOU AT ALL TIMES

S.C. C. 139 9303 1970 57

Civil Court of the City of New York

111 Centre Street, New York, N. Y. 10013

Small Claims Part, County of New York

Telephone: 566-5421

To Kidder Peabody & Co., Inc
20 Exchange Place
New York, NY

Joanne Lubera, 2 Sutton Place South, New York, NY

ask judgment in this Court against you for $ 300.00 together with costs upon the following claim:

In account N2-30652-3-50 withheld $300.00 interest charges not incurred

There will be a hearing upon this claim....., at 6:30 P.M., in the Small Claims Part Courtroom, Ground Floor, 111 Centre Street, County of New York.

You must appear and present your defense and any counterclaim you may desire to assert at the hearing at the time and place above indicated (a corporation must be represented by an attorney). Unless you do, judgment will be entered against you by default. If your defense or counterclaim, if any, is supported by witnesses, account books, receipts, or other documents, you should produce them at the hearing. The clerk, if requested, will issue subpoenas for witnesses without fee therefor.

If you admit the claim, but desire time to pay, you must appear personally on the day set for the hearing, state to the court that you desire time to pay and show your reasons for desiring time to pay.

☞ **Corporation defendants must appear by attorney. See Section 321A—C.P.L.&R.**

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Court this .....day of.....,

JOHN B. McINERNEY
Chief Clerk of the Court

Attorney for Plaintiff.....

NOTE: If you desire a jury trial, you must, at least one day before the day upon which you have been notified to appear, file with the clerk of the Small Claims Part a demand for a trial by jury. At that time you will have to make an affidavit specifying the issues of fact which you desire to have tried by a jury, and stating that such trial is desired and demanded in good faith. To obtain a jury trial you will have to pay a jury fee of $12.50 for a jury of six and you will have to file an undertaking in the sum of $50 or deposit said sum in cash, to secure the payment of any costs that may be awarded against you. Under the law, the court may award $25 additional costs to the plaintiff if a jury trial is demanded and a verdict is rendered against you.

BRING THIS NOTICE WITH YOU AT ALL TIMES

SC-9382 /1970
SC-9383

The People of the State of New York:

To KIDDER PEABODY & CO. INC.

GREETING:

We Command You, That all business and excuses being laid aside, you appear and attend before the Civil Court of The City of New York, County of _____, at the Court Room of said Court, at 111 Centre St., County of _____, City of New York, on the 5th day of NOV, 1970, at 6:30 o'clock in the evening noon, to testify and give evidence in a certain action now pending in the said Court, between HARRY ERNEST RUDEMS, JOANNE RUDEMS Landlord or Plaintiff, and KIDDER PEABODY & CO. INC. Tenant or Defendant,

SUBPOENA DUCES TECUM

on the part of the PLAINTIFFS and bring with you and produce at the time and place aforesaid a certain RECORDS SHOWING DATES OF SALES & PURCHASE OF EASTERN GAS & FUEL ASSOCIATES AND DETROIT STEEL COMPANY STOCK, STOCK CERTIFICATE NUMBERS, NAMES IN WHICH STOCK WAS RECORDED - BEFORE & AFTER EACH SALE - IN THE ACCOUNTS OF HARRY ERNEST RUDEMS & JOANNE RUDEMS

now in your custody, or under your control, and all other deeds, evidences and writings which you have in your custody or under your control relating to the merits of the action. And for a failure to attend you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit FIFTY DOLLARS in addition thereto.

Witness, Hon. _____ one of the Judges of said Civil Court of The City of New York, at The City of New York, County of _____, the 29th day of OCTOBER, 1970.

JOHN B. McINERNEY
Chief Clerk of the Court

S. C. (ex No. 9382/1970 (Year No.

CIVIL COURT, CITY OF NEW YORK
SMALL CLAIMS PART, COUNTY OF NEW YORK
111 Centre Street, New York, N. Y. 10013

Dear Sir: RE: MOTION TO STAY PROCEEDING - GRANTED -

The case of HARRY ERNEST RUBENS

vs. KIDDER, PEABODY & CO. INC.

will appear on the calendar on MAY 3 - 1971

at 6:30 P.M. (Night Court) for trial in Small Claims Courtroom, Street Floor.

SUBPOENA DUCES TECUM
VALID FOR DATE OF
ARBITRATION.

Respectfully,

JOHN B. McINERNEY
Chief Clerk of the Court

Note: *Please bring this card with you.*

43-1002 N.Y.-SC
SM-1119204(68) 346

S. C. (ex No. 9383/1970 (Year No.

CIVIL COURT, CITY OF NEW YORK
SMALL CLAIMS PART, COUNTY OF NEW YORK
111 Centre Street, New York, N. Y. 10013

Dear Sir: RE: MOTION TO STAY PROCEEDING - GRANTED -

The case of JEANNE RUBENS

vs. KIDDER, PEABODY & CO. INC.

will appear on the calendar on MAY 3 - 1971

at 6:30 P.M. (Night Court) for trial in Small Claims Courtroom, Street Floor.

SUBPOENA DUCES TECUM
VALID FOR DATE OF
ARBITRATION.

Respectfully,

JOHN B. McINERNEY
Chief Clerk of the Court

Note: *Please bring this card with you.*

43-1002 N.Y.-SC
SM-1119204(68) 346

NEW YORK STOCK EXCHANGE, INC.
DEPARTMENT OF MEMBER FIRMS
4 NEW YORK PLAZA
AT BROAD AND WATER STREETS
NEW YORK, N. Y. 10004

DIVISION OF
INQUIRIES AND COMPLAINTS

May 21, 1971

Kidder, Peabody & Co., Inc.
20 Exchange Place
New York, New York 10005

Attention: Mr. Krantz, Jr.

Re: Mr. Harry E. Rubens

Gentlemen:

There is enclosed a copy of correspondence received by this Exchange.

So we may be able to reply in this case, we would appreciate receiving your comments and position on the matter referred to.

May we remind you that your complete reply may be passed along by the Exchange in explanation of the matter.

Very truly yours,

Robert M Santora

Robert M. Santora
Complaints Investigator

Enc.

13-603 Rev.

818 LAKE AVENUE
GREENWICH,
CONNECTICUT 06830
TEL. 203 869 0200

HARRY ERNEST RUBENS
ATTORNEY AND COUNSELOR AT LAW

PATENTS
TRADEMARKS
COPYRIGHTS

TEL: 212 PLAZA 8-1660-9
2 Sutton Place South, New York City
NEW YORK 10022

May 17,1971

Accounts: U 23 0276 31
N 23 0656 50
U 23 0278 31
N 23 0652 50

New York Stock Exchange
Inquiries & Complaints Dept.
11 Wall Street
New York, N. Y. 10005

Madison Ave branch

Gentlemen:

My wife and I have a complaint against KIDDER PEABODY & CO., INC. for charging us interest in a short against the box sale in which we deposited the complete stock that was shorted.

It appears that although Kidder Peabody did not borrow anyone's stock, nevertheless we were charged interest as though the transaction involved borrowed stock.

We have requested the return of the interest but it has been refused. We enlist you aid in obtaining the return of this interest since the transaction involved no risk on the part of this broker.

Yours very truly

Harry Ernest Rubens

Harry Ernest Rubens

Jeanne Rubens

Jeanne Rubens

Exhibit I

S.C. No. 5220 1971/64

Civil Court of the City of New York

111 Centre Street, New York, N. Y. 10013

Small Claims Part, County of New York

Telephone: 566-5424

To Kidder Peabody & Co. Inc
330 Madison Ave
New York N. Y.

Harry E. Rubens 2 Sutton Pl/ So. New York N. Y.

ask judgment in this Court against you for $ 300.00 together with costs upon the following claim:

On Account N2-30656-3-50 withhold $300 interest charges not incurred

There will be a hearing upon this claim....., at 6:30 P.M., in the Small Claims Part Courtroom, Ground Floor, 111 Centre Street, County of New York.

You must appear and present your defense and any counterclaim you may desire to assert at the hearing at the time and place above indicated (a corporation must be represented by an attorney). Unless you do, judgment will be entered against you by default. If your defense or counterclaim, if any, is supported by witnesses, account books, receipts, or other documents, you should produce them at the hearing. The clerk, if requested, will issue subpoenas for witnesses without fee therefor.

If you admit the claim, but desire time to pay, you must appear personally on the day set for the hearing, state to the court that you desire time to pay and show your reasons for desiring time to pay.

Corporation defendants must appear by attorney. See Section 321A—C.P.L.&R.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Court this .....day of.....,

JOHN B. McINERNEY
Chief Clerk of the Court

Attorney for Plaintiff.....

NOTE: If you desire a jury trial, you must, at least one day before the day upon which you have been notified to appear, file with the clerk of the Small Claims Part a demand for a trial by jury. At that time you will have to make an affidavit specifying the issues of fact which you desire to have tried by a jury, and stating that such trial is desired and demanded in good faith. To obtain a jury trial you will have to pay a jury fee of $12.50 for a jury of six and you will have to file an undertaking in the sum of $50 or deposit said sum in cash, to secure the payment of any costs that may be awarded against you. Under the law, the court may award $25 additional costs to the plaintiff if a jury trial is demanded and a verdict is rendered against you.

BRING THIS NOTICE WITH YOU AT ALL TIMES

S. C. No. 5221 1971 65

Civil Court of the City of New York

111 Centre Street, New York, N. Y. 10013

Small Claims Part, County of New York

Telephone: 566-3824

To Kidder, Peabody & co. Inc
330 Madison Av
New York N.Y.

Jeanne Rubens 2 Sutton Pl. So. New York N.Y.

ask judgment in this Court against you for $ 300.00 together with costs upon the following claim:

On Account N-2-30652-3-50 withheld $300 interest charges not incurred

There will be a hearing upon this claim....., at 6:30 P.M., in the Small Claims Part Courtroom, Ground Floor, 111 Centre Street, County of New York.

You must appear and present your defense and any counterclaim you may desire to assert at the hearing at the time and place above indicated (a corporation must be represented by an attorney). Unless you do, judgment will be entered against you by default. If your defense or counterclaim, if any, is supported by witnesses, account books, receipts, or other documents, you should produce them at the hearing. The clerk, if requested, will issue subpoenas for witnesses without fee therefor.

If you admit the claim, but desire time to pay, you must appear personally on the day set for the hearing, state to the court that you desire time to pay and show your reasons for desiring time to pay.

Corporation defendants must appear by attorney. See Section 321A—C.P.L.&R.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Court this

.....day of.....,

JOHN B. McINERNEY
Chief Clerk of the Court

Attorney for Plaintiff.....

NOTE: If you desire a jury trial, you must, at least one day before the day upon which you have been notified to appear, file with the clerk of the Small Claims Part a demand for a trial by jury. At that time you will have to make an affidavit specifying the issues of fact which you desire to have tried by a jury, and stating that such trial is desired and demanded in good faith. To obtain a jury trial you will have to pay a jury fee of $12.50 for a jury of six and you will have to file an undertaking in the sum of $50 or deposit said sum in cash, to secure the payment of any costs that may be awarded against you. Under the Law, the court may award $25 additional costs to the plaintiff if a jury trial is demanded and a verdict is rendered against you.

BRING THIS NOTICE WITH YOU AT ALL TIMES

SC 5220/71
SC 5221/71

The People of the State of New York:

To KIDDER PEABODY & CO. INC.

GREETING:

We Command You, That all business and excuses being laid aside, you appear and attend before the Civil Court of The City of New York, County of New York, at the Court Room of said Court, at ~~111 Centre St.~~, County of ~~N.Y.~~, City of New York, on the 24, day of June, 1971, at 6:30 o'clock in the after noon, to testify and give evidence in a certain action now pending in the said Court, between HARRY E. RUBENS & JEANNE RUBENS Landlord or Plaintiff, and ~~KIDDER PEABODY & CO. INC.~~ Tenant or Defendant,

SUBPOENA DUCES TECUM

on the part of the ~~PLAINTIFFS~~ and bring with you and produce at the time and place aforesaid a certain RECORDS SHOWING DATES OF SALES & PURCHASE OF EASTERN GAS & FUEL ASSOCIATES AND DETROIT STEEL COMPANY STOCK, STOCK CERTIFICATE NUMBERS, NAMES IN WHICH STOCK WAS RECORDED - BEFORE & AFTER EACH SALE - IN THE ACCOUNTS OF HARRY ERNEST RUBENS & JEANNE RUBENS

now in your custody, or under your control, and all other deeds, evidences and writings which you have in your custody or under your control relating to the merits of the action. And for a failure to attend you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit FIFTY DOLLARS in addition thereto.

Witness, Hon. SIDNEY GOLD one of the Judges of said Civil Court of The City of New York, at The City of New York, County of New York, the 18 day of June 1971

JOHN B. MCKINNEY
~~Chief Clerk of the Court~~

Exhibit J

STATE OF NEW YORK
DEPARTMENT OF LAW
STATE OFFICE BUILDING
80 CENTRE STREET
NEW YORK, N.Y. 10013
TELEPHONE: 488-3313

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

DAVID CLURMAN
DIRECTOR, BUREAU OF
SECURITIES AND
PUBLIC FINANCING

November 9, 1971

Re: Kidder, Peabody & Co., Inc.

Kidder, Peabody & Co., Inc.
20 Exchange Place
New York, N.Y. 10005

Gentlemen:

Our office is in receipt of a complaint from Mr. Harry Ernest Rubens of 2 Sutton Place South, New York, N.Y.

Kindly furnish the undersigned with copies of all statements of account which your firm sent to Mr. Rubens and his wife, Mrs. Jeanne Rubens from September 1967 to date.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General
By

Arthur S. Okun

ARTHUR S. OKUN
Assistant Attorney General

ASO:rf

Exhibit K

NEW YORK STOCK EXCHANGE, INC.
ELEVEN WALL STREET
NEW YORK, N.Y. 10005

OFFICE OF THE SECRETARY
EDWARD W. MORRIS, JR.
ASSISTANT ARBITRATION DIRECTOR
JAMES R. McGUONE
ASSISTANT TO THE ARBITRATION DIRECTOR

October 12, 1972

Kidder, Peabody & Co.
Incorporated
10 Hanover Square
New York, New York 10005

Attention: Mr. Robert A. Krantz, Jr.

Gentlemen:

Enclosed is a copy of the statement of claim against your firm which has been submitted for arbitration through the facilities of the Exchange by Harry E. and Jeanne Rubens.

Please let me have a concise reply thereto at your early convenience, but in any event not later than ten days from receipt of this letter. Also, please indicate in your reply whether or not your firm intends to be represented by counsel in this matter.

Upon receipt of your reply, a formal submission to arbitration will be prepared and sent to the parties for signatures.

Following execution of the submission, the controversy will be placed on our hearing schedule.

Your attention is invited to Article VIII of the Constitution of the Exchange and to Rules 481-491 of the Board of Governors relating to arbitration.

Very truly yours,

James R. McGuone

James R. McGuone
Assistant to the
Arbitration Director

JRM/mf
Certified Mail
Return Receipt

Arbitration Director
The New York Stock Exchange
11 Wall Street
New York, New York 10005

Dear Sir:

1. This is a request for arbitration of a claim by Harry Ernest Rubens and Jeanne Rubens, claimants against Kidder Peabody & Co. Inc. broker, having a place of business at 20 Exchange Place, New York, New York 10005, for wrongfully withholding sums from claimants, which upon information and belief, amounts to $9950, and accrued interest.

2. The exact sum will be determined by examination of the relevant records of the aforesaid broker.

3. The request for arbitration has been imposed upon claimants by the broker, based upon a printed form agreement which the broker compelled the claimants to sign, but which was never signed by the broker in the presence of the claimants, nor was an executed copy of the same concurrently given claimants.

4. The claim of $9950 is based upon the following facts.

a) Claimants delivered 5900 shares of stock, fully owned by claimants, to the broker with instructions to engage in certain market transactions.

b) During these transactions and as a result of the same, the broker acquired approximately $270,000 in cash which sums were withheld from claimant.

c) The broker, upon information and belief, loaned said $270,000 to third parties receiving interest sometimes in excess of 9%.

d) Such interest was withheld from claimants.

e) Although claimants had never borrowed any money from the broker, various interest charges were charged against claimants, at interest rates sometimes exceeding 9%.

f) At no time during these transactions did the broker incur any financial risk, or invest any money to justify charging any interest or receiving any interest.

g) Such interest rates charged by the broker were in addition to thousands of dollars charged by the broker for buying and selling stock during said transactions.

h) At the end of the market transaction, claimants received different stock certificates from those given the broker at the start of the market transaction.

5. Claimants request that the deposit of costs by them be either waived, as provided for non-members in the Rules And Procedures, Sec. II of the New York Stock Exchange or be deposited by the broker, in view of the broker's insistence that the New York Stock Exchange conduct this arbitration, rather than a New York City Court in which claimants sought relief, and for which claimants had twice deposited the required fees to obtain relief.

6. Claimants request a mixed panel of arbitrators under the rules set forth, but consisting only of persons not connected with the business of purchasing and selling stocks and bonds, since the brokers have obviously sought an advantage by removing a hearing on the claim from an impartial court of law to this somewhat less than partial forum.

7. In the event a hearing by the arbitrators cannot be concluded before November 1, 1972, then claimants request that the hearing be conducted in Miami, Florida, the nearest large city to Bay Harbor Islands where claimants maintain their residence.

8. Claimants request that the relevant records of the broker be immediately opened to inspection by the claimants so that a minimum amount of time be spent at the hearing by the arbitrators, since the broker has ignored a court subpoena for producing such records by stating that such records be made available only at the hearing, which would result in a great delay at the hearing.

9. Claimants are appearing here in person.

Respectfully requested,

Harry Ernest Rubens

Jeanne Rubens

Present Address: 2 Sutton Place South
New York, N.Y. 10022

-76

HARRY E. and JEANNE RUBENS,

Claimants

- and -

KIDDER, PEABODY & CO. INCORPORATED,

Respondent

SUBMISSION

20-140 3-70

New York Stock Exchange, Inc.

In the Matter of the Arbitration between

Harry E. and Jeanne Rubens,

Claimants

- and -

Kidder, Peabody & Co. Incorporated,

Respondents

SUBMISSION

We, the undersigned parties hereby submit to arbitration by Arbitrators selected in accordance with Paragraph ~~XXXXI.~~ ~~XXXXXX.~~ IV. B. 1. ~~XXXXXX.~~ ~~XXXXXX.~~ of the within submission the matter in controversy between us and all the matters, claims and counterclaims relating thereto, set forth in the statements of the parties, annexed hereto, and we agree to abide by and perform any award rendered pursuant to this agreement, and we do further agree that a judgment of any Court having jurisdiction thereof may be entered on said award and to that end do voluntarily submit ourselves to the jurisdiction of said court.

We further agree that the above entitled arbitration shall be held at a place to be designated by said Arbitrators in the City of New York and State of New York, and shall be conducted in accordance with the following:

Article VIII of the Constitution of the New York Stock Exchange provides as follows:

"SEC. 1. Any controversy between parties who are members, allied members, member firms or member corporations shall, at the instance of any such party, and any controversy between a non-member and a member or allied member or member firm or member corporation arising out of the business of such member, allied member, member firm or member corporation, or the dissolution of a member firm or member corporation, shall, at the instance of such non-member, be submitted for arbitration, in accordance with the provisions of the Constitution and the Rules of the Board of Governors.

"SEC. 2. The Board of Governors, in accordance with the provisions of Section 5 of Article III, shall adopt rules governing the procedure for arbitration through the facilities of the Exchange, which, among other matters, shall fix the maximum amount chargeable to the parties as costs to

cover the expense of the hearings, which shall include the fees of the Arbitrators, and may from time to time amend, alter or repeal any rule so adopted.

"SEC. 3. The President, subject to the approval of the Board of Governors, shall designate one of the officers or other employees of the Exchange as Arbitration Director, and may also designate an employee of the Exchange as Assistant Arbitration Director, to act in the absence or inability to act of the Director. The Arbitration Director shall be charged with the duty of performing all ministerial duties in connection with matters submitted for arbitration pursuant to this Article.

"SEC. 4. Promptly after the annual election of the Exchange, the Chairman of the Board of Governors shall appoint, subject to the approval of the Board of Governors, a Board of Arbitration to be composed of such number of members and allied members of the Exchange who are not members of the Board of Governors as the Chairman of the Board of Governors shall deem necessary, to serve at the pleasure of the Board of Governors, or until the next annual election of the Exchange and their successors are appointed and take office.

The Chairman of the Board of Governors shall from time to time appoint two panels of arbitrators, composed of persons who are residents of or have their places of business in the Metropolitan area of the City of New York, to serve until the next annual election of the Exchange and until their successors are appointed and take office. The first of such panels shall be composed of persons engaged in the securities business and the second of such panels shall be composed of persons not engaged in the securities business. The Chairman of the Board of Governors may likewise appoint panels similar to the panels above described to serve outside the City of New York.

"SEC. 5. *Member Controversies.* Any controversy between parties who are members, allied members, member firms or member corporations shall be submitted for arbitration to members of the Board of Arbitration provided for by Sec. 4 of this Article, and the decision of a majority of the Arbitrators selected to hear and determine the controversy shall be final. If the amount (exclusive of interest and costs) involved in the controversy is less than $10,000 the controversy shall be heard by three Arbitrators. If such amount is $10,000 or more the controversy shall be heard by five Arbitrators. All such proceedings shall be held in the City of New York.

"SEC. 6. *Non-Member Controversies.* Any controversy between a non-member and a member or allied member or member firm or member corporation, arising out of the business of such member, allied member, member firm or member corporation or the dissolution of a member firm or a member corporation shall, at the instance of such non-member, be submitted for arbitration as provided hereinbelow. If the proceedings are to be held in the City of New York, the controversy shall be heard and determined as follows:

(a) By five Arbitrators, to be selected by lot, by the Arbitration Director, as follows: one Arbitrator from the Board of Arbitration, one Arbitrator from the first of the panels and three Arbitrators from the second of the panels provided for by Sec. 4 of this Article; or,

(b) If the non-member elects the Board of Arbitration to hear and determine the controversy and the amount (exclusive of interest and costs) involved is less than $10,000, by three Arbitrators, or

(c) If the non-member elects the Board of Arbitration to hear and determine the controversy and the amount involved is $10,000 or more, by five Arbitrators.

Arbitration proceedings pursuant to this Section shall be held in the City of New York, except as may be otherwise provided in the Rules of the Board of Governors.

If the proceedings are to be held outside the City of New York, such Arbitrators shall be selected, from panels appointed for service outside the City of New York, by lot, by the Arbitra-

tion Director, as follows: two Arbitrators from the first of such panels and three Arbitrators from the second of such panels provided for by Sec. 4 of this Article.

The decision of a majority of the Arbitrators shall be final.

"SEC. 7. *Provisions Applicable to All Controversies.* All arbitration proceedings shall be conducted in such manner and pursuant to such rules as the Board of Governors shall from time to time adopt.

"The Board of Governors may decline in any case to permit the use of the arbitration facilities of the Exchange pursuant to this Article and may delegate such power in accordance with the provisions of Section 1 of Article III.

"The Arbitrators in any case may at any time during the proceedings, and shall upon the joint request of the parties thereto, dismiss the proceedings and refer the parties to their remedies at law. In any arbitration proceeding, whether involving a member controversy or a non-member controversy, the Arbitrators may determine, subject to the rules of the Board of Governors, the amount chargeable to the parties as costs, to cover the expense of the hearings, and, upon the determination of such controversy, shall determine by whom such costs shall be borne or may in their discretion remit all or any part thereof. Where the expense of the hearings exceeds the amount chargeable to the parties as costs, such excess shall be borne by the Exchange.

"There shall be no appeal to the Board of Governors from a decision of the Arbitrators in any arbitration proceeding."

RULES AND PROCEDURE

I. Institution of Proceedings

A. Statement of Claim:

"A member, allied member, a member organization, or a non-member who wishes to institute proceedings pursuant to the provisions of Article VIII of the Constitution against any such person or organization shall file with the Arbitration Director a concise statement of claim or controversy." (*First paragraph of Rule 481—Board of Governors.*)

"Where the parties to a controversy have previously entered into an agreement to arbitrate future disputes in accordance with the procedure of the Exchange, or a court has issued an order directing such an arbitration, proceedings may be instituted by either party filing with the Arbitration Director a concise statement of claim or controversy, together with a copy of the agreement providing for arbitration or court order and moving papers." (*Second paragraph of Rule 481—Board of Governors.*)

"The statement of claim or controversy shall specifically set forth the matters to be arbitrated and, if possible, the amount claimed." (*Third paragraph of Rule 481—Board of Governors.*)

B. Reply and Counterclaim:

"A copy of the statement filed by the party initiating the proceeding shall be furnished by the Arbitration Director to the opposing party for reply. Said reply shall be filed with the Arbitration Director within ten days of the receipt by such opposing party of said statement, or such longer period as may be granted by the Exchange. In the event that the opposing party wishes to assert a counterclaim, said reply shall contain a statement of counterclaim, which shall specifically set forth the matter to be arbitrated and, if possible, the exact amount of said counterclaim. The initiating party shall be given the same opportunity to reply to the counterclaim as was given the opposing party in the case of the original statement of claim or controversy." (*Fourth paragraph of Rule 481—Board of Governors.*)

C. Submission:

"If the Exchange does not decline to accept jurisdiction, a copy of the statement of claim or controversy and the reply, and counterclaim if any, and reply to the counterclaim, shall be attached to a form of submission prescribed by the Exchange, which shall be sent to the parties and shall be executed and acknowledged by the parties before an officer duly authorized by law. Said submission shall be promptly filed with the Arbitration Director." (*Fifth paragraph of Rule 481—Board of Governors.*)

"Where a copy of an agreement between the parties to arbitrate future disputes in accordance with the procedure of the Exchange, or a copy of a court order directing such an arbitration, has been filed with the Exchange, the Exchange may accept such agreement or order in lieu of requiring the execution of a submission." (*Sixth paragraph of Rule 481—Board of Governors.*)

II. Costs

"The maximum amount chargeable to the parties as costs to cover the expense of the hearings shall not exceed the following, which amount shall be deposited with the Exchange by the party initiating a proceeding upon institution of proceedings or prior to each subsequent hearing, as the case may be, unless such requirement is waived by the Exchange for a non-member party.

"Where the amount (exclusive of interest and costs) involved in the controversy is:

	Member Controversy	*Non-Member Controversy*
$500 or less	$60	$25
More than $500 but not more than $1000	60	50
More than $1000 but less than $2500	60	60
$2500 or more but less than $5000	90	90
$5000 or more but less than $10,000	90 per hearing	90 per hearing
$10,000 or more	120 per hearing	120 per hearing

"Where the controversy does not involve a money claim, the costs and the amount to be deposited, shall be such amount as may be fixed in advance by the Exchange, except that such amount shall not exceed $120 per hearing." (*Rule 482—Board of Governors.*)

III. Counsel

"A party is not required to be represented by an attorney at any stage in an arbitration including the hearings. However, a party has a right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. A party who is to be represented by an attorney shall so notify the Arbitration Director and shall also furnish him with the attorney's name and address in the statement of claim or reply or reply to a counterclaim, as the case may be, or if the right to representation by an attorney is claimed subsequent to the filing of the statement of claim or reply or reply to a counterclaim, by a written notice to the other party or parties and the Arbitration Director. After the Arbitration Director has received such notification from a party, subsequent papers in the proceeding to be served on such party shall be served upon his attorney." (*Rule 483—Board of Governors.*)

IV. Arbitrators

A. Member Controversies:

In the case of a controversy between members, allied members, member firms or member corporations, the Arbitrators shall be members of the Board of Arbitration.

1. If the amount (exclusive of interest and costs) involved in the controversy is less than $10,000 the controversy shall be heard by three Arbitrators.
2. If the amount is $10,000 or more the controversy shall be heard by five Arbitrators.

B. Non-Member Controversies:

In the case of a controversy between a non-member and a member, allied member, member firm or member corporation, the Arbitrators shall be

1. five persons selected from the panels of the Exchange, as provided in Section 6 of Article VIII of the Constitution; or, at the election of the non-member, made in the submission,
2. three members of the Board of Arbitration if the amount (exclusive of interest and costs) involved is less than $10,000;
3. five members of the Board of Arbitration if the amount involved is $10,000 or more.

"If the non-member party to a proceeding does not signify in the statement of claim or the reply, as the case may be, or within five days after he is requested to do so by the Exchange, whichever is later, whether he elects to have the controversy adjudicated by Arbitrators selected from the Panels of the Exchange or by members of the Board of Arbitration, he shall be deemed not to desire to make the election permitted him under Article VIII, Section 6, of the Constitution and the Arbitrators shall be selected by lot from the Panels of the Exchange, pursuant to said section." (*Rule 484—Board of Governors.*)

V. Place of Hearings

A. Member Controversies:

Controversies between members, allied members, member firms or member corporations shall be heard in New York City.

B. Non-Member Controversies:

Controversies between a non-member and a member, allied member, member firm or member corporation shall be heard in New York City, except, where controversies involve any parties who are located outside of New York City, the Exchange may, at the request of the non-member, designate some other place in the United States.

VI. Hearings

"Subsequent to the receipt of the submission, duly executed by the parties, or where a submission is not required pursuant to the provisions of Rule 481, subsequent to the receipt of the statements of the parties, the Arbitrators shall appoint a time and place for the hearing and shall cause notice thereof to be given to each of the parties as provided in Rule 487 of the Board of Governors. If any of the parties, after due notice, fails to be present or represented at a hearing or any adjourned hearing, the Arbitrators may, nevertheless, in their own discretion, proceed with the adjudication of the controversy.

"At the hearing, the statements of the parties shall be read to the Arbitrators, unless such reading shall be specifically waived by the parties or their attorneys-in-fact or counsel; each of the parties or his attorney-in-fact or counsel shall be permitted to make an opening statement, present witnesses and documentary evidence, and present closing arguments orally or in writing as may be determined at the hearing by the Arbitrators. Witnesses shall be subject to examination by the opposing party or his attorney-in-fact or counsel. The hearings shall be formally declared closed by the Arbitrators. Such hearings may, in the discretion of the Arbitrators, be reopened at any time prior to the making of an award.

"At any time during the hearings or before the hearings are declared closed, any party may move the amendment of his claim or counterclaim, and, if the Arbitrators shall permit, such amendment shall be incorporated forthwith in an amendment to the submission to be executed by the parties in the same manner as in the case of the original submission, or, where a submission was not required, in an amendment to the statement of claim or counterclaim, as the case may be.

"The Arbitrators may adjourn the hearings from time to time upon the application of either party or at their own instance." (*Rule 485—Board of Governors.*)

VII. Award

"The award of the Arbitrators shall be made in writing and shall be acknowledged in like manner as a deed to be recorded.

"The Arbitrators in the award shall fix the amount of costs chargeable to the parties to cover the expense of the hearings, and shall determine the manner in which and by whom such costs shall be borne." (*Rule 486—Board of Governors.*)

VIII. Notices and Communications

"Notices may be given to the parties by the Arbitration Director or otherwise as the Arbitrators may direct.

"Notices of hearings shall be given to the parties or their attorneys-in-fact or counsel in writing personally or by registered or certified mail at least ten days in advance of such hearing, unless such notice is waived by the parties or their attorneys-in-fact or counsel. Notice of an adjourned hearing may be given orally by the Arbitrators at any preceding hearing.

"All other notices, orders, papers and communications, including a copy of the award, may be served on any party by delivering or mailing the same to the party or his attorney-in-fact or counsel." (*Rule 487—Board of Governors.*)

IX. Oath of the Arbitrators and Witnesses

"Before proceeding with an arbitration, an oath shall be administered to the Arbitrators in the presence of the parties, except where the parties or their attorneys-in-fact or counsel continue the arbitration without objection to the failure of the Arbitrators to take the oath, or where the oath is waived in writing by the parties to the submission or their attorneys-in-fact or counsel.

"Witnesses shall be sworn before testifying, unless the taking of an oath is waived by the parties or their attorneys-in-fact or counsel." (*Rule 488—Board of Governors.*)

X. Subpoenas

"The Arbitrators and any attorney of record in the arbitration proceeding shall have such powers of subpoena as may be provided by law, but so far as it is possible for them to do so, the parties shall produce witnesses and present proofs without the issuance of subpoena." (*Rule 489—Board of Governors.*)

XI. Constitutional Provisions and Rules Part of Submission

"The provisions of Article VIII of the Constitution and of Rules 481-491 of the Board of Governors shall be deemed to be a part of the submission and the parties shall be bound thereby, except that, with the prior consent of the Exchange, the parties may otherwise agree, in so far as the Rules of the Board are concerned." (*Rule 490—Board of Governors.*)

XII. Interpretation of Rules

"During the course of proceedings, the Arbitrators in a particular case shall have the power to interpret and apply Rules 481-491 of the Board of Governors and the provisions of the submission and such interpretation shall be binding upon the parties." (*Rule 491—Board of Governors.*)

XIII. Amendment to Rules

The Board of Governors may from time to time amend, alter or repeal any of the Rules of the Board with respect to arbitration, either generally or in reference to a particular case, as it in its sole discretion may find expedient.

Signed at New York, N.Y., on Nov 3, 1972, by under the warranties contained in paragraph No. 3 of the statement of claim, by

Harry E. Rubens

(Mr. Harry E. Rubens, Two Sutt
Place South, New York, New Yor
10022.)

Jeanne Rubens

Mrs. Harry E. Rubens

(Mrs. Harry E. Rubens, Two Sutt
Place South, New York, New Yo
10022).

Signed at New York, N.Y., on Nov 22, 1972, by

William N. Rosen V.

(Signature of an Authorized O
of KIDDER, PEABODY & CO. INC
ATED, Ten Hanover Square, Ne
New York 10005. Attn: Edwi
Solot, Esq.)

ACKNOWLEDGMENT OF CLAIMANT(S)

STATE OF New York)
COUNTY OF New York) SS.:

On this 3 day of November, 1972, before me personally appeared HARRY ERNEST RUBENS to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Gertrude A. Kaden

GERTRUDE A. KADEN
Notary Public, State of New York
No. 41-2013760
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1973

STATE OF New York)
COUNTY OF New York) SS.:

On this 3 day of November, 1972, before me personally appeared JEANNE RUBENS to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Gertrude A. Kaden

GERTRUDE A. KADEN
Notary Public, State of New York
No. 41-2013760
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1973

NOTE: If executed outside of New York State, attach Certificate of County Clerk or other appropriate official as to the authority of the Notary Public or other official taking the acknowledgment.

ACKNOWLEDGMENT FOR CORPORATION

STATE OF New York)
COUNTY OF New York) SS.:

On this 22 day of Nov, 1972, before me personally appeared William N. Lovers, to me known, who, being by me duly sworn, did depose and say that he is the Vice Pres of Kidder, Peabody & Co, Incorporated the corporation described in and which executed the foregoing instrument; that he has full authority to file the said statement in the name and on behalf of the said corporation; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Elizabeth E. Murphy

ELIZABETH E. MURPHY
Notary Public, State of New York
No. 30-2223385
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1973

NOTE: If executed outside of New York State, attach Certificate of County Clerk or other appropriate official as to the authority of the Notary Public or other official taking the acknowledgment.

(see page 73) 86
(see page 74) 87
88

REPLY TO STATEMENT OF CLAIM

OF HARRY E. AND JEANNE RUBENS

1. Claimants have failed to specifically set forth the matter(s) to be arbitrated.

2. Kidder, Peabody & Co., Incorporated did not acquire approximately $270,000 in cash which sums were withheld from the Claimants nor lend said amount to third parties receiving interest sometimes in excess of 9%.

3. Kidder, Peabody & Co., Incorporated did not improperly withhold nor improperly charge interest to the Claimants.

4. Activity in the Claimants' account at all times was consistent with the rules of the Federal Reserve Board and the New York Stock Exchange. Credit balances in the Claimants' account were necessary to collateralize short positions, and interest charges were necessitated as positions were "marked to the market."

Exhibit M

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS, et ano.,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE, INC., et al.,

Defendants.

---

73 Civ. 3557
(Brieant, J.)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Harry Ernest Rubens, sworn to September 26, 1973, the undersigned shall move this Court before the Hon. Charles L. Brieant, Jr. in Room 706 of the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York, on October 9, 1973 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to F.R. Civ. P. Rule 56 granting summary judgment against the defendant Ladder, Peabody & Co., Incorporated.

Dated: New York, New York
September 26, 1973

Yours, etc.,

PETER L. BERGER, ESQ.
Attorney for Plaintiffs,
370 Lexington Avenue
New York, New York 10017

9/26/73

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

HARRY ERNEST RUBENS, et ano., :

Plaintiffs, :

-against- : 73 Civ. 3557 (Brieant, J.)

NEW YORK STOCK EXCHANGE, INC., et al., :

Defendants. : AFFIDAVIT

----------x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

HARRY ERNEST RUBENS, being duly sworn, deposes and says:

1. I am one of the plaintiffs in this action. This affidavit is in support of the motion for summary judgment against the defendant Kidder, Peabody & Co., Incorporated.

2. In a concurrent motion to dismiss the complaint with respect to defendant Kidder, Peabody & Co., Incorporated, an affidavit was submitted in support of said motion by one Edwin Lee Solot, an employee of Kidder, Peabody & Co. In this affidavit the essential facts alleged in the complaint are admitted:

1) That the Plaintiffs delivered 5900 shares of stock to Kidder, Peabody & Co. (Solot affidavit, page 2, item 4).

2) That title to such shares was placed in the name of the defendant (Solot affidavit page 2, item 4).

3) That 5900 shares of identical stock was sold for the account of plaintiffs. (affidavit page 2, item 5)

4) That the proceeds of such sale amounted to $241,900, which was not delivered to plaintiffs nor made available to them when received by defendant. (Solot affidavit page 3, item 6)

5) That the plaintiffs were assessed interest charges after the sale of the plaintiffs interest in the shares upon the basis that defendants' bookkeeping procedures improperly indicated that defendant had advanced money to plaintiffs in the transaction. (Solot affidavit, pages 3, 4, and 5, items 6, 7 and 8)

3. Accordingly, a judgment should be granted against the defendant Kidder, Peabody & Co., having admitted the essential allegations in the first and third causes of action.

4. That the defendant has no right to impose arbitration upon plaintiff in an action for violation of the fraud sections of the Security Exchange Act, is admitted by defendant in its "Memorandum" in support of the defendant's concurrent motion to dismiss in language quoted below from pages 7 and 8 of the defendant's memorandum:

> ". . . it has been established that a broker cannot by the provisions of an agreement to arbitrate future controversies compel its customer to arbitrate a dispute that substantially involves a violation of the Securities Act of 1933 or the Securities Exchange Act of 1934. See, e.g., Wilko v. Swan, 346 U.S. 427 (1953) (1933 Act);

Axelrod & Co. v. Kordich, Victor & Neufeld, 451 F.2d 838 (2d Cir. 1971) (dicta). The reasoning with respect to the 1934 Act is that a prior agreement to arbitrate is a "stipulation" waiving compliance with a provision of the 1934 Act (i.e., the exclusive jurisdiction of the United States district courts under Section 27) and is therefore void under Section 29(a) of the Act which provides:

"Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule of an exchange required thereby shall be void." 15 U.S.C. § 78cc(a).

5. While defendant says that agreements to arbitrate between exchange member firms are valid in spite of Section 29(a), no law has been cited to support the proposition that:

1) a claim of fraud should be subject to arbitration, or

2) a claim by the public against a member of the NYSE should be subject to arbitration, or

3) a claim by the public alleging fraud against a member should be arbitrated, or

4) a claim of fraud for violations of the Security Exchange Act, or

5) a claim for injunctive relief here sought barring repitition of the acts cited in the complaint.

6. Accordingly, the demand for arbitration sought by the defendant is clearly in violation of Section 29(a) of the Securities Exchange Act, and the fourth cause of action requesting

an injunction against the defendants from enforcing arbitration proceedings by a printed form or in any agreement required of the public seeking to purchase or sell stock from defendants should be granted, and specifically against any arbitration proceeding before any panel selected by the New York Stock Exchange, Inc., or one containing members of the New York Stock Exchange, Inc. should be granted.

HARRY ERNEST RUBENS

Sworn to before me this

26th day of September 1973.

Notary Public

BAYBA OKER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-[illegible]
Qualified in New York County
Commission Expires [illegible]

United States District Court

Southern District of New York

Harry Ernest Rubens	:	
Jeanne Rubens	:	
plaintiffs	:	
v.	:	Civil Action No. 73 Civ. 3557 (Brieant, J.)
New York Stock Exchange, Inc.'	:	
Kidder Peabody & Co., Inc.;	:	AFFIDAVIT
members Merrill, Lynch, Pierce,	:	
Fenner & Smith, Inc.	:	
defendants	:	

AFFIDAVIT IN SUPPORT OF MEMORANDUM IN OPPOSITION OF DEFENDANT, KIDDER PEABODY & CO., INCORPORATED MOTION TO DISMISS

Harry Ernest Rubens being duly sworn deposes and says:

1. I am one of the plaintiffs in this action. This affidavit is in support of the plaintiffs' memorandum in opposition to the defendants motion to dismiss.

2. The 5900 shares of stock delivered to defendan. Kidder Peabody & Co., Inc. were wholly owned by plaintiffs. The title to this stock was transferred to the name of Kidder Peabody.

3. The letter from the transfer agent indicating such transfer is attached hereto, exhibit A.

4. From the Solot affidavit it is clear that the plaintiffs' securities were dumped "in bulk" thus causing a loss of identity of the original shares, insofar as ever returning these identical shares to plaintiffs.

5. Thereafter, contrary to the Solot affidavit, pages 2 and 3, items 4, 5 and 6, the defendant sold 5900 shares, some of which included the very

shares delivered to defendant, as has been ascertained by a paid Search into the transfer records of the First National Bank of Boston, exhibit B, and the Morgan Guaranty Trust Company, based upon information received from the defendant, see letter Exhibit C. For example, Kidder Peabody sold 3000 shares of Eastern Gas & Fuel Associates including shares No. N6477-79(Ex.C) these shares were given to Kidder Peabody in part for the surrender of Harry Ernest Rubens shares No. 76297/76301 and 8247/8251, see Exhibit B.

6. Consequently the defendant merely dipped into its inventory of shares which included the shares delivered to defendant by plaintiffs and sold them without regard to origin.

7. This procedure,by agreement between the New York Stock Ex-Change and the defendant,constitutes the initial step in the conspiracy.

8. The cash received from the sale of 5900 shares of plaintiffs, was used by the defendants as part of its general cash position and was loaned to margin accounts of the defendant to purchase stocks on the smaller margin permitted. These margin accounts were charged interest running up to 9% and more, for the unpaid balance, which interest was kept by defendant. The cash amounting to about $241,900, see Solot affidavit, page 4, item 8, was not made available to plaintiffs.

9. Thereafter defendant set up a fictitious bookkeeping system containing no reference to the shares delivered to defendant by plaintiffs and merely reciting the presence of the selling price of the shares.

10. When the sold stock rose in market value, the defendants charged the plaintiffs interest, alleging that it had to furnish plaintiffs with the difference between plaintiffs selling price and the market price, a fictitious transaction, since theoretically, if it was not plaintiffs' shares which were sold;then defendant retained not only the proceeds from the sale but also the full collateral which also rose in value as the shares previously sold.

11. The defendant without risk to itself, since plaintiffs were bound by the selling price, justifies its conduct by alleging that it borrowed the sold stock from third parties to which it was forced to deliver the selling price.

12. The exhibits establish that this assertion is fraudulent and that the stocks are commingled so that only detective work of a higher order was needed to show that part of the shares sold actually included shares delivered to defendant by plaintiffs.

13. As appears from the Solot affidavit this fake and wholly fictitious procedure, is based upon Rules 402.70, Solot affidavit page 2, item 4, New York Stock Exchange Rule 431 and 369(1), Solot affidavit page 3, item 6, and New York Stock Exchange Rule 369(1) Solot affidavit page 4, item 7, all part of the conspiracy between the defendants which formulated the rules.

14. The defendants base their right to defraud plaintiffs on rules which they themselves have set up.

15. When plaintiffs wrote to the New York Stock Exchange complaining of the foregoing, the New York Stock Exchange requested Kidder Peabody, see Solot exhibit I, to formulate a reply that could be passed to plaintiffs in justification of its conduct.

16. The defendant New York Stock Exchange formulated the rules with the assistance of its members, the remaining defendants, which condoned the conduct of defendant.

17. The stay of proceeding requested by defendant should be denied for reasons set forth in my affidavit in support of the motion for summary judgment. In short, the arbitration required by defendants is in violation of Section 29(a) of the Security & Exchange Act reading as more particularly set forth in the attached memorandum.

18. Further in an attempt to recover monetary damages (not injunctive relief which is required herein) plaintiffs under protest participated in a sham arbitration, the arbitrating panel wholly selected by the

New York ... containing two members of the New York Stock Exchan... refusing to disqualify themselves, one of them proceeded to testify on behalf of defendant; before the other members of the panel.

19. The defendants are licensed under the Security and Exchange Act. They should not be permitted to act as commercial pirates operating to suit their whims and pocketbook.

20. This suit is an attempt to limit their conduct in the field of securities on a public exchange.

HARRY ERNEST RUBENS

Sworn to before me this

26th day of September 1973.

Notary Public

ELAYBA ORER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-2956855
Qualified in New York County
Commission Expires March 30, 1975

THE FIRST NATIONAL BANK OF BOSTON

STOCK TRANSFER DIVISION

MAILING ADDRESS:
P. O. BOX 644
BOSTON, MASS. 02102

August 25, 1971

Harry Ernest Rubens
2 Sutton Place South
New York, New York 10022

Dear Mr. Rubens:

Eastern Gas and Fuel Associates

In reply to your letter dated August 16, 1971, we find from our shareholders records for Eastern Gas and Fuel Associates, that Certificate No. 76303/7 dated 10/13/66 for 100 shares each registered in the name of Harry Ernest Rubens were transferred out of your account into the name of Kidder Peabody & Co., Inc. on January 22, 1968.

We trust that the above information will be of assistance to you.

Very truly yours

Mrs. B. K. Lyons

(Mrs.) B. K. Lyons
Shareholder Relations Department

Exhibit A

THE FIRST NATIONAL BANK OF BOSTON

Stock Transfer Division

July 19, 1973

Mr. Harry Ernest Rubens
2 Sutton Place
New York, NY 10022

Dear Mr. Rubens:

Eastern Gas & Fuel Associates

As requested in your letter of July 3, 1973, we return for your files the original letter of consent and information regarding shares of Eastern Gas & Fuel Associates as furnished by Kidder Peabody & Co., Inc.

Although the total number of shares as stated in Mr. Solot's letter is 3,000, we have found in our research that the certificates as listed in this letter are in 100 share denominations and total 2,900 shares.

As stated in my letter of June 26th, Certificate Numbers N6477/6479 were issued October 9, 1967 for 100 shares each in the name of Kidder Peabody & Co., Incorporated upon the surrender of Certificate Numbers 8247/8251 at 100 shares each and Certificate Numbers 76297/76301 at 100 shares each in the name of Harry Ernest Rubens. This finding has been confirmed since this transaction does appear on the New York transfer sheets for that date.

Enclosed, you will also find copy of my letter in which is stated that Certificate Numbers 14655/14660 at 100 shares in the name of Kidder Peabody & Co., Incorporated were surrendered for transfer on February 27, 1970. Please refer to Item Number 1.

With regards to your request for additional information concerning the balance of shares registered in both your name and your wife's which was not covered in my letter, we recall that relative to your inquiry of August 30, 1971 information was provided concerning these accounts.

Upon receipt of your letter of July 3rd, we fail to find your remittance of $50.00 to cover the research for information previously rendered and we would also remind you that additional information will be furnished at the cost of $9.75 for each hour of research involved.

Very truly yours,

B K Lyons

(Mrs.) B. K. Lyons
Shareholder Relations Department

Exhibit B

BKL: ks: 432

POST OFFICE BOX 644, BOSTON, MASSACHUSETTS 02102

Kidder, Peabody & Co.
INCORPORATED
Founded 1865
NEW YORK · BOSTON · PHILADELPHIA · CHICAGO
SAN FRANCISCO · LOS ANGELES · ATLANTA · DALLAS

10 HANOVER SQUARE
NEW YORK, N.Y. 10005

May 22, 1973

Mr. and Mrs. Harry Rubens
2 Sutton Place, South
New York, New York 10022

Dear Mr. and Mrs. Rubens:

As per your request, our records indicate that the purchasers were as follows:

Eastern Gas and Fuel

1000 shares - Harris Upham & Co. Incorporated
1000 shares - Eastman Dillon, Union Securities & Co. Incorporated
400 shares - Oppenheimer & Co.
600 shares - Blair & Co. Incorporated

The transfer agent is Morgan Guaranty and the certificate numbers were CB14598, N6477-79, NY/C76015-6, NY/C76010, NY/C77003, N4265-6, CB17037, CB14543, N13056, CB18565-70, CB10549, N13971-79.

Detroit Steel Corporation

2900 shares - Axelrod & Co.

Contact Cleveland Trust Company for transfer information. Detroit Steel had a name change and then subsequently was liquidated and the shareholders received Cleveland Cliffs. The certificate numbers were 154652-75.

Very truly yours,

Edwin Lee Solot

ELS/rk

cc: Mr. Joseph Bondi

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

HARRY ERNEST RUBENS, et ano.,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE, INC., et al.,

Defendants.

- -X

73 Civ. 3557

MEMORANDUM AND ORDER

Brieant, J.

A substantial portion, or perhaps all of the matter in controversy between the parties to this action has been submitted to arbitration pursuant to the rules of the New York Stock Exchange. Arbitration is now proceeding and hearings are expected to resume before the panel of arbitrators on October 17, 1973, which is an agreed date, selected by a consensus of the arbitrators and the parties.

This action commenced August 15, 1973, while the arbitration was in recess on consent. A stay of all proceedings is appropriate. 9 U.S.C. §3.

Whether the arbitration, or the judgment of a court

which will presumably be entered thereon disposes of the entire controversy is a matter which should be reserved for decision after the arbitration proceeding is complete.

The submission to arbitration of an existing controversy [factually distinguishable from an agreement to submit future controversies to arbitration] does not violate any provision of the securities laws. Pearlstein v. Scudder & German, 429 F.2d 1136, 1143 (2d Cir. 1970), cert. denied 401 U.S. 1013 (1971).

All proceedings in this action [including, but not limited to, all discovery, plaintiffs' motion for summary judgment and the motion of defendant Kidder, Peabody & Co. to dismiss the complaint] are hereby stayed pending the further order of the Court.

Arbitration should not be permitted to proceed at the snail's pace often attributed to litigation. Under the circumstances, the parties, and, we hope, the arbitrators, will act with diligence in order to resolve the controversy.

The Court will conduct a conference of all counsel

appearing in the action on January 11, 1974 in Room 2704 at 2:00 P.M., to obtain a status report concerning the action, and to consider whether the stay of proceedings should be continued. In the event that the arbitrators render a decision prior to such date, movant shall file a true copy in Chambers, and furnish all counsel with a copy of his letter transmitting same.

So Ordered.

Dated: New York, New York
October 9, 1973

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

HARRY ERNEST RUBENS, et ano., :

Plaintiffs, :

-against- : 73 Civ. 3557 (Brieant, J.)

NEW YORK STOCK EXCHANGE, INC., et al., : NOTICE OF MOTION

Defendants. :

- x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Edwin Lee Solot, Esq., sworn to February 4, 1974, and exhibits annexed thereto, upon the annexed statement pursuant to Rule 9(g) of this Court, and upon all papers and prior proceedings herein, the undersigned shall move this Court before the Hon. Charles L. Brieant, Jr. in Room 706 of the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York, on February ~~11, 22,~~ 15, 1974 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to F.R.Civ.P. 56(b) granting summary judgment for defendant Kidder, Peabody & Co. Incorporated or, alternatively, for an order pursuant to F.R.Civ.P. 12(b)(6) dismissing the complaint for failure to state a claim upon which relief can be granted, and for an order directing the entry of final judgment as to defendant Kidder, Peabody & Co. Incorporated in accordance with F.R.Civ.P. 54(b).

Dated: New York, New York
January 31, 1974

Yours, etc.,

SULLIVAN & CROMWELL

By MARVIN SCHWARTZ
(A Member of the Firm)
Attorneys for Defendant
Kidder, Peabody & Co. Incorporated
48 Wall Street
New York, New York 10005
(212) 952-8100

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS, et ano., Plaintiffs,	:	
-against-	:	73 Civ. 3557 (Brieant, J.)
NEW YORK STOCK EXCHANGE, INC., et al., Defendants.	:	9(g) STATEMENT

The following material facts present no genuine issue to be tried:

1. All of the causes of action alleged herein against Kidder, Peabody & Co. Incorporated ("Kidder, Peabody") were submitted by plaintiffs to arbitration.

2. Following the arbitration proceedings, the arbitrators rendered a decision dismissing plaintiffs' claims.

Dated: New York, N. Y.
January 31, 1974

SULLIVAN & CROMWELL

By MARVIN SCHWARTZ
(A Member of the Firm)
Attorneys for Defendant
Kidder, Peabody & Co. Incorporated
48 Wall Street
New York, New York 10005
(212) 952-8100

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

HARRY ERNEST RUBENS, et ano., :

Plaintiffs, :

-against- : 73 Civ. 3557 (Brieant, J.)

NEW YORK STOCK EXCHANGE, et al., : AFFIDAVIT

Defendants. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EDWIN LEE SOLOT, being duly sworn, deposes and says:

1. I am an attorney and a member of the Legal and Tax Department of defendant Kidder, Peabody & Co. Incorporated ("Kidder, Peabody"), a corporation which has its principal place of business in New York. I represented Kidder, Peabody in the arbitration initiated by plaintiffs against Kidder, Peabody. The decision of the arbitrators is annexed hereto as Exhibit "A". The submission to arbitration is Exhibit "B". Plaintiffs' statement of claim for arbitration is Exhibit "C". I incorporate herein by reference my affidavit of September 13, 1973, which was submitted in support of Kidder, Peabody's motion for dismissal or for a stay.

EDWIN LEE SOLOT

Sworn to before me this
4th day of February, 1974.

Notary Public

Exhibit A

NEW YORK STOCK EXCHANGE , INC.

In the Matter of the Arbitration Between
Harry E. and Jeanne Rubens,

Claimants

- and -

Kidder, Peabody & Co. Incorporated,

Respondent

DECISION

We, the undersigned, being the arbitrators selected to hear and determine a matter in controversy between the above-mentioned claimant and respondent set forth in a submission to arbitration signed by the parties on November 3, 1972 and November 22, 1972 respectively;

And having heard and considered the proofs of the parties, have decided and determined that the claim of the claimant be and hereby is in all respects dismissed;

That the costs, $270.00 , be and hereby are assessed against the claimant

New York, New York
October 17, 1973

STATE OF New York) SS.:
COUNTY OF New York)

On this 17th d , of October , 1973 , before me personally appeared John R. Meaney to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Mark L. Bowin
MARK L. BOWIN
Notary Public, State of New York
No. 41-0271375
Qualified in Queens County
Commission Expires March 30, 1975

STATE OF New York) SS.:
COUNTY OF New York)

On this 17th day of October , 1973 , before me personally appeared George T. Flynn to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Mark L. Bowin
MARK L. BOWIN
Notary Public, State of New York
No. 41-0271375
Qualified in Queens County
Commission Expires March 30, 1975

STATE OF New York) SS.:
COUNTY OF New York)

On this 17th day of October , 1973 , before me personally appeared Edward J. Foley, Jr. to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Mark L. Bowin
MARK L. BOWIN
Notary Public, State of New York
No. 41-0271375
Qualified in Queens County
Commission Expires March 30, 1975

STATE OF New York) SS.:
COUNTY OF New York)

On this 17th day of October , 1973 , before me personally appeared F. Page Storment to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Mark L. Bowin
MARK L. BOWIN
Notary Public, State of New York
No. 41-0271375
Qualified in Queens County
Commission Expires March 30, 1975

STATE OF New York) SS.:
COUNTY OF New York)

On this 17th day of October , 1973 , before me personally appeared Alfred V. Van Beuren to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Mark L. Bowin
MARK L. BOWIN
Notary Public, State of New York
No. 41-0271375
Qualified in Queens County
Commission Expires March 30, 1975

(pages 110 to 119 are the same as Pages 76-85) 110 to 119

1/4/74

UNITED STATES DISTRICT COURT 126

SOUTHERN DISTRICT NEW YORK

HARRY ERNEST RUBENS, et ano.,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE, INC. et al.,

Defendants.

73 Civ. 3557
(Brieant, J.)

AFFIDAVIT IN SUPPORT FOR PLAINTIFFS' MEMORANDUM

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

HARRY ERNEST RUBENS, being duly sworn, deposes and says:

The arbitration proceeding was initiated by the Defendant Kidder, Peabody, Inc., as the following facts, which are established by the documents supplied by Defendant, attest:

1. Plaintiffs, upon rejection of their demand for the return of interest, brought suit in the New York State Court.

2. Defendants' attorneys wrote Plaintiffs demanding that the Plaintiffs comply with the margin agreement, Exhibit A, which stated that future controversies be arbitrated. Such letter, Exhibit B, was rejected.

3. Defendant thereupon, as it has done here, brought a motion to stay the New York State Court action, alleging Plaintiffs to be bound by the margin agreement, Exhibit C.

4. The New York State Court upheld the margin agreement and stayed, later dismissed the action, while granting

a subpoena for the Defendants' records for the date of the arbitration. (Exhibit D)

From the foregoing it is established that the Defendant Kidder, Peabody initiated and compelled the arbitration proceeding upon Plaintiffs. The amount of the interest, about $600.00, precluded Plaintiffs from filing suit in the Federal Court.

It was during the arbitration proceeding to which the Plaintiffs objected both as to its character and composition, that Plaintiff learned that the New York Stock Exchange itself had arranged with its members to take Plaintiffs shares, and sell them or identical shares and to treat the transaction as if Plaintiffs had not supplied the identical shares to the Defendants.

Moreover, Plaintiffs learned from the transfer agent for some of the shares that the Defendant Kidder,Peabody, Inc. had actually sold shares which the Plaintiff had turned over to the Defendant.

Thus, it appears that Defendant demanded more than a brokerage fee for selling the shares. It demanded control of the sums which it had obtained from the sale of Plaintiffs' shares, and it had set up a false loan to Plaintiffs for which it demanded interest, alleging that despite the control of the money from the sale, it was entitled to possession of more money (or interest therefor) when the market price of the shares sold rose above the selling price, which hurt the Plaintiffs, not the Defendant.

In carrying out the comspiracy alleged in the complaint, Defendants continued the use of margin agreements requiring arbitration, although void under the Security Exchange Act, and specifically held void by the U.S. Supreme Court in Wilko v. Swann. This conduct amounts to a deception on the New York State Court.

The purpose of the arbitration requirements is to permit the New York Stock Exchange to impanel a board of arbitration of its own selection. When this panel refused to disqualify itself and eliminate two representatives of members of the New York Stock Exchange itself, Plaintiffs sought relief in the Federal Court.

The panel of arbitration was not only improper in its selection, it was partial, obviously, to the Defendant, for it refused to honor the subpoena issued by the New York State Court, but on one occasion a panel member proceeded to testify for Defendant as to how the sold shares were obtained stating, "they were borrowed" although in fact they were not.

The panel of arbitration set up by the New York Stock Exchange pursuant to the requirement for arbitration set up in the margin agreement is so heavily biased against the public, that it is common knowledge as witness the article by Robert Metz, a New York Times financial writer, dated November 30, 1973, attached hereto as Exhibit E.

Respectfully submitted,

Harry Ernest Rubens

HARRY ERNEST RUBENS

Sworn to before me this
4 day of January 1974

Notary Public

Notary Public, State of Florida at Large
My commission expires May 17, 1974.

ACCOUNT NO. U23-0278-31

DATE September 29, 1967

VERIFIED BY _____ SALESMAN

CHECKED BY _____ MANAGER

APPROVED BY _____ VOTING STOCKHOLDER

Kidder, Peabody & Co.
Incorporated

HOME ADDRESS 2 Sutton Place South, New York, NY 10002 TELEPHONE

Jeanne Rubens

YOU A CITIZEN OF THE U.S.A.? yes OVER 21 YEARS OF AGE? yes RELATED TO A KIDDER, PEABODY OFFICER OR EMPLOYEE? no

OCCUPATION AND NAME OF CONCERN WHERE EMPLOYED IF MARRIED WOMAN, GIVE HUSBAND'S NAME & BUSINESS: Harry Ernest Rubens - U23-0276

SOCIAL SECURITY OR IDENTIFICATION NUMBER BANK REFERENCE OR PREVIOUS BROKERAGE ACCT.

NAME Account # U21-5588-3

ADDRESS

In case of joint account of husband and wife, give the husband's number. In case of other joint accounts, give only one social security number. A corporation, broker, trust or estate, institution, etc, will insert its tax identification number

CUSTOMER'S AGREEMENT

To Kidder, Peabody & Co.
Incorporated

The undersigned agrees with respect to all accounts that he has or may have with you, whether individual, joint or as guarantor:

Any transaction hereunder shall be subject to applicable law and to the constitution, rules, regulations, customs and usages of the exchange or market (and its clearing house, if any) where executed.

Debit balances, including all advances and expenditures in your opinion necessary or advisable in respect of transactions hereunder, shall be payable on demand and shall bear interest in accordance with your usual custom, together with any extra rates caused by credit conditions and other charges to cover your credit and other services.

You are to hold as security for payment of all liabilities to you however arising, all cash, credits, securities or other property now or hereafter held or carried by you in all accounts of the undersigned, with the right on your part in your discretion and without notice to transfer any thereof interchangeably among any of such accounts. Additional security will be deposited with you as you may from time to time require. You shall have the right at any time without notice to apply any such cash or credits to payment of any debit balances or other obligations of the undersigned. Whenever in your discretion you deem it necessary for your protection, you may sell any such securities or other property, buy in any thereof of which any account of the undersigned may be short or cancel or close out any outstanding order or contract, all without demand for additional security or payment, notice or advertisement. Any such transaction may be made in your discretion on any exchange or market or by public or private transaction and on any credit or delivery terms, and, other than in a private transaction, you may participate therein as the other party for your own account, free from any right of redemption. In any event the undersigned shall remain liable for any deficiency.

Exhibit A

17, AVENUE MATIGNON, PARIS 8e
TELEPHONE 359 08-00
TELEX 26970
CABLE ADDRESS: LADYCOURT, PARIS

SULLIVAN & CROMWELL

TELEPHONE 212 HANOVER 2 8100
TELEX 62094
CABLE ADDRESS: LADYCOURT, NEW YORK

48 Wall Street, New York 10005

October 29, 1970

Mrs. Jeanne Rubens,
2 Sutton Place South,
New York, New York.

Dear Mrs. Rubens:

You have recently filed a claim in the Civil Court of the City of New York, Small Claims Part, against Kidder, Peabody & Co., for interest charges allegedly withheld but not incurred. As you should be aware, the Customer's Agreement which you entered into with Kidder, Peabody & Co. provides that any controversy relating to your account shall be settled by arbitration. I have attached a copy of the Customer's Agreement which you signed and have underlined that portion of the Agreement which provides for arbitration.

As counsel for, and on behalf of, Kidder, Peabody & Co. I hereby make demand that the disputes which you have raised be settled by arbitration and that you make your election of arbitration procedure pursuant to the terms of the Customer's Agreements. Furthermore, since the disputes are to be settled by arbitration, I request that you take the necessary steps to discontinue the actions in the Civil Court of the City of New York, Small Claims Part.

Sincerely,

William T. Stephens.

William T. Stephens

(Enclosures)

Exhibit B

CIVIL COURT OF THE CITY OF NEW YORK

SMALL CLAIMS PART, COUNTY OF NEW YORK

JEANNE RUBENS,		
Plaintiff,	:	S.C. No. 9383 1970
v.	:	
KIDDER, PEABODY & CO., INC.,	:	NOTICE OF MOTION
Defendant.	:	

SIRS:

PLEASE TAKE NOTICE, that, upon the annexed affidavit of William T. Stephens and attached documents, the defendant, Kidder, Peabody & Co., Inc., by its attorneys Sullivan & Cromwell, will move this Court at the hearing upon the claim herein in the Small Claims Part Courtroom, Ground Floor, 111 Centre Street, County of New York on November 9, 1970 at 6:30 P.M. or as soon thereafter as counsel may be heard, for an order staying this proceeding pursuant to C.P.L.R. § 7501 and C.P.L.R. § 7503(a) so that the dispute herein may be settled by arbitration pursuant to the written agreement of the parties.

Dated: New York, N.Y.
October 30, 1970

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for Defendant
Kidder, Peabody & Co., Inc.
48 Wall Street
New York, N.Y. 10005
HAnover 2-8100

TO: JEANNE RUBENS
2 Sutton Place South
New York, N.Y.

Exhibit C

CIVIL COURT OF THE CITY OF NEW YORK

SMALL CLAIMS PART, COUNTY OF NEW YORK

JEANNE RUBENS, Plaintiff, v. KIDDER, PEABODY & CO., INC., Defendant.	AFFIDAVIT OF WILLIAM T. STEPHENS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM T. STEPHENS, being duly sworn, deposes and says,

1. I am an associate attorney in the firm of Sullivan & Cromwell and in such capacity I have represented the defendant Kidder, Peabody & Co., Inc. in this action.

2. To the best of my knowledge and belief, Harry Ernest Rubens and Jeanne Rubens signed Customer's Agreements on September 29, 1967 with Kidder, Peabody & Co., Inc. by which they agreed that any dispute which arose out of or related to their accounts would be settled by arbitration in accordance with the rules of either the American Arbitration Association or the New York Stock Exchange. (Copies of those Customer's Agreements are attached hereto as Exhibits A and B.)

3. As provided in the Customer's Agreements I, on behalf of Kidder, Peabody & Co., Inc., made demand on Harry Ernest Rubens and Jeanne Rubens for arbitration pursuant to the terms of the agreement. This demand was embodied in a letter which I sent to Mr. Rubens on October 23, 1970. (A

"C"

copy of that letter is attached hereto as Exhibit C.) I attached to the demand for arbitration copies of the Customer's Agreement which provides for arbitration.

4. I also sent an additional and separate demand for arbitration to Jeanne Rubens on October 29, 1970 and attached a copy of the Customer's Agreement which she signed and which provides for arbitration. (A copy of that letter is attached hereto as Exhibit D.)

William T. Stephens
William T. Stephens

Subscribed and sworn to before me,
this 30th day of October, 1970.

George H. Fairchild
Notary Public

GEORGE H. FAIRCHILD
NOTARY PUBLIC, State of New York
Residing in Kings County
Kings Co. Clk's No. 24-6223800
Certificate Filed in
New York Co. Clk's Office
Commission Expires March 30, 1972

"C"

TELEPHONE: 212 HANOVER 2-0100
TELEX: 62094
CABLE ADDRESS: LADYCOURT, NEW YORK

TELEPHONE: 359 [illegible]
TELEX: 20970
CABLE ADDRESS: LADYCOURT, PARIS

SULLIVAN & CROMWELL

48 Wall Street, New York, 10005

October 29, 1970

Mrs. Jeanne Rubens,
2 Sutton Place South,
New York, New York.

Dear Mrs. Rubens:

You have recently filed a claim in the Civil Court of the City of New York, Small Claims Part, against Kidder, Peabody & Co., for interest charges allegedly withheld but not incurred. As you should be aware, the Customer's Agreement which you entered into with Kidder, Peabody & Co. provides that any controversy relating to your account shall be settled by arbitration. I have attached a copy of the Customer's Agreement which you signed and have underlined that portion of the Agreement which provides for arbitration.

As counsel for, and on behalf of, Kidder, Peabody & Co. I hereby make demand that the disputes which you have raised be settled by arbitration and that you make your election of arbitration procedure pursuant to the terms of the Customer's Agreements. Furthermore, since the disputes are to be settled by arbitration, I request that you take the necessary steps to discontinue the actions in the Civil Court of the City of New York, Small Claims Part.

Sincerely,

William T. Stephens

(Enclosures)

(EXHIBIT D)
"C"

Oct 21 1972
Year No

S. C. Index No 9383/1970

CIVIL COURT, CITY OF NEW YORK
SMALL CLAIMS PART, COUNTY OF NEW YORK
111 Centre Street, New York, N. Y. 10013

Dear Sir: RE: MOTION TO STAY PROCEEDING - GRANTED -

The case of JEANNE RUBINS

vs. KIDDER, PEABODY & CO. INC.

will appear on the calendar on [illegible] Small Claims Courtroom, street Floor, at 6:30 P.M. (Night Court Session)

SUBPOENA DUCES TECUM
VALID FOR DATE OF
ARBITRATION.

Respectfully,

JOHN B. McINERNEY
Chief Clerk of the Court

Note. *Please bring this card with you.*

Exhibit D

41 [illegible] NY SC
SMCT [illegible]

Exhibit E

Market Place: Failings Found For Arbitration

By ROBERT METZ

Sandra Golini is a widow, aged 47, and was, until 1970 anyway, a brokerage customer. She had a $56,000 account, modest by Wall Street standards but all she had. She borrowed against her shares to purchase a home in Glen Cove.

Now Mrs. Golini's money is gone, her house is in jeopardy and she takes odd jobs caring for the sick and elderly to make ends meet.

Was she greedy, buying high-risk stocks during a bull market that saw millions of shareholders in this role? Perhaps, though she insists not. She argues that her account was "churned" by brokers who got her to trade excessively in "promising" situations that did not work out.

Mrs. Golini agreed to have the matter considered by an arbitration panel. Though the New York Stock Exchange says it does not arbitrate disputes between customers and brokers, it does provide the facilities for such action.

Mrs. Golini says that prior to the arbitration, she was assured that the conduct division of the exchange would support her claim at the hearing on the basis of its lengthy investigation of the matter. She says it failed to do so at the hearing. She lost the decisio

●

The arbitration and subsequent events have left her with a sensation of having been smothered to death by moths.

After she lost the decision, Mrs. Golini turned to Hans Reinisch, a securities industry expert who has helped a number of small investors. Mr. Reinisch, who is not a lawyer, insists that the procedures are unfair since Mrs. Golini was not given a chance to confront the registered representatives.

She was told in a letter from the exchange dated April 4, 1972, that Alexander Schumacher and Timothy Barnes, her registered representives, were not being included as parties to the arbitration since they were not members of the exchange. The exchange says it only has jurisdiction over members in this type of arbitration.

The two men, then, were represented by two partners and a lawyer for the brokerage firm involved, Tucker, Anthony & R. L. Day.

Mrs. Golini had felt she could not afford recourse to lawyers and the courts and thus chose the arbitration procedure, at which she represented herself.

She says the Tucker, Anthony partners and lawyer spoke privately with the arbitrators at the end of the hearing—but before a decision was rendered. After the decision, Mr. Reinisch, in a June letter to Hugh F. Owens, then acting chairman of the Securities and Exchange Commission, complained that the alleged conversation was a "clear contravention" of accepted arbitration standards.

●

Mr. Owens asked the exchange for a response to all the Golini-Reinisch charges.

In a three-page letter dated Aug. 1, 1973, the exchange appeared to contradict its earlier stand on representatives not being under its arbitration procedure jurisdiction. That letter said in part:

"Registered representatives may appear voluntarily, may be named as third-party respondents by their firms, or may appear as witnesses. I know of no request in this case either prior to or at the time of the hearing to have Messrs. Barnes and Schumacher present."

The letter was signed by Edward W. Morris Jr., the exchange's arbitration director. The earlier letter on the question was signed by the then arbitration director, Richard M. Drew.

●

An exchange spokesman said yesterday that he did not feel the two letters were contradictory. He explained the apparent inconsistency in the second letter, which said, "I know of no request in this case . . .," as referring to no request by the member firm. Under the arbitration procedures, he explained, only the firm could make such a request.

As for the discussion Mrs. Golini alleges between principals of the firm and the panel before the decision was handed down, the letter to the S.E.C. cited Raymond Grabowski, the panel chairman, one of two exchange panel members and a principal of Spear, Leeds & Kellogg, as saying he could remember no such conversation. There were also three public members of the panel.

When Mrs. Golini lost the arbitration decision, she did turn to a lawyer, at Mr. Reinisch's suggestion. The lawyer sought a transcript of the registered representatives' testimony to the conduct division to see if he had a case before Mrs. Golini experienced heavy legal costs. The exchange wrote the lawyer that testimony taken by the division was "considered private and confidential" and therefore could not be released.

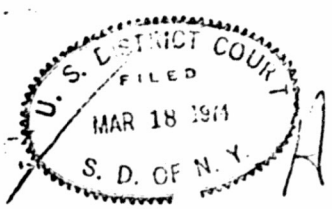
Comments Mr. Reinisch:

"It seems to me that the arbitration is weighted in favor of the brokers.

Exhibit E

New York Stock Exchange Tr

ORIGINAL



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS and JEANNE RUBENS,

Plaintiffs,

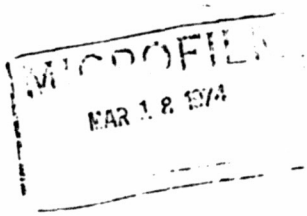
-against-

NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; MEMBERS, MERRILL LYNCH PIERCE FENNER & SMITH, INC.,

Defendants.

73 Civ. 3557-CLD

MEMORANDUM AND ORDER



Bryant, J.

Defendant Kidder, Peabody & Co., Incorporated ("Kidder") moves alternatively for summary judgment pursuant to Rule 56(b), F.R.Civ.P., or to dismiss pursuant to Rule 12(b)(6) for failure to state a claim.

By their complaint, filed August 15, 1973, plaintiffs pleaded a total of four separate causes of action. The first cause is alleged against Kidder only. The second is pleaded against Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), and the last two are alleged against the New York Stock Exchange, Inc., and both of its said member firms.

Subject matter jurisdiction was asserted based on Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934, and 17(a) of the Securities Act of 1933. There is no diversity jurisdiction.

Movant relies on undisputed facts. Kidder is a stockbroker. Plaintiffs were its customers. They had each executed identical printed form customer agreements requiring them to arbitrate certain controversies therein described which might arise in futuro.

The agreement to arbitrate possible future, inchoate controversies [contrasted with an agreement to arbitrate an existing dispute] was voidable under Wilko v. Swan, 346 U.S. 427 (1953) and its progeny, if the controversy arose under federal securities laws. The Wilko doctrine, however, does not bar submission of an existing controversy to arbitrators. Pearlstein v. Scudder & German, 429 F.2d 1136, 1143 (2d Cir. 1970), cert. denied 401 U.S. 1013 (1971); Moran v. Paine, Webber, Jackson & Curtis, 389 F.2d 242 (3rd Cir. 1968).

After executing the printed form of customer agreement, plaintiffs delivered to Kidder stock certificates for 2,900

shares of Detroit Steel Corporation and 3,000 shares of Eastern Gas & Fuel Associates, then having a total market value of about $241,900.00. Plaintiffs instructed Kidder to sell the same number of shares "short against the box". Kidder did so, and acting under claim of right, withheld the proceeds, and charged its customers' account about $600.00 interest on marks to the market until such time as the short sale would be closed out. As the proceeds of sale remained with Kidder, plaintiffs also lost the use of their money for a period, and Kidder used the funds in its business, including the making of interest bearing loans to other customers.

There was no clandestine aspect to Kidder's conduct; the withholding of the sales proceeds was known to plaintiffs and the interest charges were debited openly on their monthly statements of account following the making of the short sale.

Subsequently, plaintiffs demanded return of the interest debited against their margin account, and when this was refused, sued Kidder in the Civil Court of the City of New York for $600.00.

There, they stated a colorable state claim for money

had and received, of which that Court had subject matter jurisdiction without regard to the federal securities laws, and with respect to which the customers agreement to arbitrate future controversies was, under state law, valid and enforceable.

On October 30, 1970, Kidder moved timely, for an order of the Civil Court staying the proceedings and directing arbitration. That Court did so, and later dismissed the action, while granting a subpoena for the arbitration proceeding.

It would seem clear that plaintiffs could have dropped their efforts to obtain redress on their state claim, and begun an action in this Court alleging a claim, arising out of the same operative facts, based on the federal securities laws. Had they then done so, we would have considered those state proceedings no bar, [Vernitron Corp. v. Benjamin, 440 F.2d 105 (2d Cir.), cert. denied 402 U.S. 987 (1971); cf. Pearlstein v. Scudder & German, supra] and further, that plaintiffs could, under Wilko, litigate their federal claim in this Court, without the necessity of arbitrating.

But plaintiffs, persons of apparent means and reasonable intelligence, did not do this. Instead, shortly

rior to November, 1972, plaintiffs acted pursuant to the arbitration agreement. Exercising a choice available thereunder, between arbitration under the rules of the American Arbitration Association, and arbitration pursuant to the rules of the New York Stock Exchange, they selected the latter method. They served and filed a clearly stated and articulate formal request, addressed to the Arbitration Director of the Exchange, setting forth in more than adequate detail, facts constituting the basis of their claim against Kidder. Therein, they made a number of specific requests as to how the arbitration should be conducted, and "appear[ed] ... in person" [see ¶ 9 of the request for arbitration, attached as Exhibit C to the Notice of Motion].

Thereafter, on November 3, 1972, plaintiffs executed a formal submission, on printed NYSE forms, and thereafter proceeded to arbitrate. While the arbitration was pending, and in recess on consent until an agreed date, October 17, 1973, plaintiffs on August 15, 1973 instituted this action.

The action was stayed pending resolution of the arbitration. See our memorandum and order dated October 9, 1973

and filed herein.

Following the award of arbitrators, plaintiffs failed to move for an order modifying or vacating the award within 20 days as required by New York C.P.L.R. §7509 (McKinney 1963).

The claim being arbitrated was, colorably, a state law claim. Plaintiffs in the first instance so regarded it, and that view is not unreasonable. Documents before the Court on this motion, and undisputed facts compel the inference that plaintiffs elected to arbitrate. If the conclusion of the Civil Court of the City of New York was wrong, as now contended, plaintiffs should have appealed, or alternatively brought action in this Court at that time on their federal claim. [Cf. Pearlstein, supra.]

Instead, they filed a request for arbitration [Exhibit C] containing at the same time a purported disclaimer which reads:

> "3. The request for arbitration has been imposed upon claimants by the broker, based upon a printed form agreement which the broker compelled the claimants to sign, but which was never signed by the broker in the presence of the claimants, nor was an executed copy of the same concurrently given claimants."

Later, in their formal submission [Exhibit B] they wrote:

> "Signed at New York, N. Y. on Nov. 3, 1972, under the circumstances contained in paragraph No. 3 of the statement of claim, by ... "
> [Signatures omitted]

We view this disclaimer as being of no effect under the circumstances. Plaintiffs acted affirmatively to initiate the arbitration, and to elect between two optional methods of procedure available under their customer agreements. The inference is unavoidable that if the arbitration had resulted in a large recovery against Kidder, plaintiffs would have found no infirmity therein. Clearly, plaintiffs by their affirmative actions, as well as by their failure to sue before the arbitrators convened, waived all rights to object to arbitrability.

Now, disappointed with the outcome of the arbitration, they seek to "Blow hot and cold", something which is not to be permitted. See Beck, Walter, "Estoppel Against Inconsistent Positions in Judicial Proceedings, 9 Bklyn Law Review 245.

Accordingly, I conclude that the motion for summary judgment should be granted.

Alternatively, plaintiffs' allegations of fraud appear

insufficient to support a Rule 10b-5 action. See Republic Technology Fund, Inc. v. The Lionel Corp., 483 F.2d 540 (2d Cir.), cert. denied, ____ U.S. ____ (1973); Chris-Craft Indus., Inc. v. Bangor Punta Corp., 480 F.2d 341 (2d Cir. 1973); Shemtob v. Shearson, Hammill & Co., 448 F.2d 442 (2d Cir. 1971). If our decision rested on this ground alone, the Court would permit plaintiffs to replead and comply with Rule 9(b), F.R.Civ.P. In view of the arbitration award, this would be pointless.

There remains the question whether we may make the express determination that there is no just reason for delay, and should direct a final judgment as to movant, only, in accordance with Rule 54(b), F.R.Civ.P.

The piecemeal disposition of litigation, followed by piecemeal appellate review, is not favored. On February 7, 1974 this Court approved a stipulation which provided, with respect to the co-defendants, that

> "the time for these defendants to answer or move with respect to the complaint herein be and hereby is extended to twenty (20) days after the determination of plaintiffs' pending motion for summary judgment against defendant Kidder, Peabody & Co., Inc., or such other date as Court may hereafter establish."

Tested by hindsight, that stipulation now appears to have been approved improvidently, since there is now no basis before the Court to permit us to evaluate whether or not final judgment should be entered solely as to Kidder. As to this issue, decision is reserved to await the coming in of a responsive motion or pleading from these other defendants.

The complaint is dismissed as to defendant Kidder, Peabody & Co., Inc. only.

So Ordered.

Dated: New York, New York
March 18, 1974

Charles L. Brieant Jr.

CHARLES L. BRIEANT, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS, JEANNE RUBENS, Plaintiffs,	:	
-against-	:	73 Civ. 3557 (C.L.B.)
NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; members MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,	:	ANSWTR
Defendants.	:	

Defendant New York Stock Exchange, Inc. (hereinafter "the Exchange"), by its attorneys, Milbank, Tweed, Hadley & McCloy, for answer to the complaint herein:

1. Denies each and every allegation contained in paragraph 1 of the complaint, except admits that jurisdiction is purportedly based on the grounds alleged.

2. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 2 and 3, except admits that the Exchange is a New York corporation doing business in New York City, State of New York.

3. Denies each and every allegation contained in paragraph 4 of the complaint, except admits that the Exchange is a not-for-profit corporation which engages in certain regulatory activities with respect to its members.

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 32, 33 and 37 of the complaint.

5. Denies each and every allegation contained in paragraphs 25, 27, 28, 29, 30, 31, 34, 36, 38 and 39 of the complaint as they relate to the Exchange, and denies knowledge or information sufficient to form a belief as to the truth thereof as they relate to the other defendants.

FOR A FIRST SEPARATE AND COMPLETE DEFENSE, ALLEGES:

6. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND SEPARATE AND COMPLETE DEFENSE, ALLEGES:

7. Plaintiffs' purported claims are barred by the applicable statute of limitations.

FOR A THIRD SEPARATE AND COMPLETE DEFENSE, ALLEGES:

8. The Exchange is not a necessary or proper party to this action.

FOR A FOURTH DEFENSE, ALLEGES:

9. Plaintiffs' purported claims, insofar as they may arise from alleged dealings with defendant Kidder, Peabody & Co., Inc., are barred by the order of this Court dated March 18, 1974.

FOR A FIFTH DEFENSE, ALLEGES:

10. Upon information and belief, plaintiffs' purported claims, insofar as they may arise from dealings with defendant Merrill Lynch, Pierce, Fenner & Smith, Inc., are barred by that defendant's repayment of all interest charges to plaintiffs.

WHEREFORE, defendant New York Stock Exchange, Inc., demands judgment dismissing the complaint as against it, with costs and disbursements.

MILBANK, TWEED, HADLEY & McCLOY

By _____
(A Member of the Firm)
Attorneys for Defendant
New York Stock Exchange, Inc.
1 Chase Manhattan Plaza
New York, New York 10005
(212) 422-2660

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS, JEANNE RUBENS Plaintiffs, -against- NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; members MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., Defendants.	73 Civ. 3557 (CLB) NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavit of Sherman Gray sworn to May 3, 1974 and the exhibits annexed thereto and upon the annexed statement pursuant to Rule 9(g), defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated will move this court before the Honorable Charles L. Brieant, Jr., in Room 706 of the United States Courthouse, Foley Square, New York, New York on May 20, 1974 at 9:30 A.M. or as soon thereafter as counsel may be heard for an order granting summary judgment in its favor pursuant to Rule 56, F.R. Civ. P. or in the alternative for an order striking the allegations of the complaint herein against it pursuant to Rule 11, F.R. Civ. P.

Dated: New York, New York
May 7, 1974

BROWN, WOOD, FULLER, CALDWELL & IVEY

By _____
(A Member of the Firm)
Attorneys for defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Liberty Plaza
New York, New York 10006
Telephone: (212) 349-7500

TO: Peter L. Berger, Esq.
Attorney for plaintiffs
370 Lexington Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY [illegible], JEANNE RUBENS, Plaintiffs, -against- NEW YORK STOCK EXCHANGE, INC.; [illegible], MERRILL LYNCH & CO., INC.; members [illegible], PIERCE, FENNER & SMITH, INC., Defendants.	73 Civ. 3557 (CLB) STATEMENT PURSUANT TO RULE 9(g)

Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") contends there is no genuine issue to be tried concerning the following material facts:

1. On or about June 27, 1968 plaintiffs ordered defendant Merrill Lynch to execute for their account a short sale against the box of 3,000 shares of Great Western Financial Corporation. Merrill Lynch did execute this transaction for plaintiffs' account and risk.

2. Plaintiffs maintained this short against the box position from June 27, 1968 to January 21, 1970, when they ordered Merrill Lynch to cover their short sale.

3. During the time when plaintiffs maintained their short against the box position, Merrill Lynch from time to time debited their account for interest charges totalling $1,321.84 and credited their account with interest totalling $67.54, resulting in a net interest charge of $1,254.33 against the plaintiffs.

4. On or about August 27, 1970, Merrill Lynch credited the Rubens' account with the amount of $1,254.33 in order to return the interest which had been charged to their short against the box position.

WHEREFORE, defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated moves this court for summary judgment in its favor pursuant to Rule 56, F.R. Civ. P.

Dated: New York, New York
May 7, 1974

BROWN, WOOD, FULLER CALDWELL & IVEY

By _____
(A Member of the Firm)

Attorneys for defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Liberty Plaza
New York, New York 10006
Telephone: (212) 349-7500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS, JEANNE RUBENS, Plaintiffs, -against- NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; members MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., Defendants.	73 Civ. 3557 (CLB) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Sherman Gray, being duly sworn, deposes and says:

1. I am a Vice President of defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and at all relevant times I was Manager of its Foreign Department. I am familiar with the facts and circumstances of this action and with the records of Plaintiffs' account at Merrill Lynch.

2. I make this affidavit in support of Merrill Lynch's motion for summary judgment or to strike the complaint on the grounds that Merrill Lynch has returned the interest charges in dispute to the plaintiffs and that there are no remaining issues of facts or law in this case.

3. Harry Rubens and Jeanne Rubens owned 3,000 shares of Great Western Financial Corp. ("Great Western") prior to June, 1968. On or about June 27, 1968 they ordered Merrill Lynch to execute a "short sale against the box" of 3,000 shares of Great Western. In this type of trans-

action, the customer wishes to retain his long position in certain securities while selling short the identical securities in order to protect himself from a price decline in the stock. In order to carry out the customer's wishes, the broker cannot deliver the customer's long shares to the buyer in the short sale transaction because that would cause the transaction to be a "long" sale and would violate the customer's instructions to maintain simultaneous long and short positions.

4. In order to execute this short against the box, the Rubens deposited with Merrill Lynch their 3,000 shares of Great Western at the time that they ordered the short sale. Merrill Lynch borrowed other shares to effect delivery to the buyer on the short sale either from another broker or from another one of its customers. This borrowing resulted in a debit balance in the Rubens' account number 176-26560 of $67,948.62, the value of the stock which Merrill Lynch had to borrow to effect delivery on the short sale of 3,000 Great Western shares at the market price of 23.

5. The Rubens maintained their short against the box position from June, 1968 until January 21, 1970 when they purchased 3,000 shares of Great Western at a price of 19 to cover their short sale. During the time when the short against the box position remained open, interest charges totaling $1,321.87 were made against their short position in account number 176-26560. During that same time period, the Rubens were credited with interest from time to time on their corresponding long position whenever the market price of Great Western declined below the short sale price

of 23. These credits, totaling $67.54, were made to the Rubens' account number 176-22306, where their long position in Great Western was maintained. Therefore, the net interest charged to the Rubens amounted to $1,254.33 on this entire transaction.

6. These interest charges and credits were made in accordance with the normal practice of the brokerage industry in handling short sales against the box. However, Mr. Rubens complained about this practice after his position had been closed out, apparently because he erroneously believed that Merrill Lynch could have used the shares held in his long position to effect delivery to the buyer on his short sale. Mr. Rubens' letter of January 19, 1970 was the first such complaint and is annexed hereto as Exhibit A. My reply, dated February 17, 1970, explaining the necessity for maintaining two separate bona fide positions is annexed hereto as Exhibit B.

7. Mr. Rubens' next letter of February 22, 1970 threatening to "take the necessary steps to recover" these interest charges is annexed hereto as Exhibit C.

8. My reply dated February 26, 1970, assuming that Rubens "did not fully understand" the necessary procedures and offering to refund the disputed interest "as an exception to our policy" is annexed hereto as Exhibit D. Mr. Rubens' reply of March 20 is annexed hereto as Exhibit E.

9. On or about August 27, 1970, Merrill Lynch credited the Rubens' account number 176-22306 in the amount of $1,254.33 in order to return the interest which had been charged to their short against the box position. A copy of my letter to Mr. Rubens informing him of this credit is annexed hereto as Exhibit F.

10. In a letter dated September 30, 1970, Mr. Rubens acknowledged the return of the interest and expressed his thanks, while continuing to argue about the propriety of the original charge. A copy of this letter is annexed hereto as Exhibit G. A copy of my reply expressing the belief that the specific problem was settled is annexed hereto as Exhibit H.

11. Finally, Mr. Rubens' letter of November 13, 1970 is annexed hereto as Exhibit I. The question in that letter concerning the alleged discrepancy of approximately $67.00 between the interest returned to him and the interest charged to his short account is explained by the interest credits which were made to the Rubens' long position while they were short against the box, as explained above in paragraph 5.

12. Defendant Merrill Lynch maintains the position that the interest charges it made against Mr. Rubens were entirely proper. Nevertheless, it returned to him the full amount that he was charged on the assumption that he did not understand the necessary brokerage procedures involved in a short sale against the box.

FOR THE FOREGOING reasons, defendant Merrill Lynch moves this Court for an order granting summary judgment in its favor, or, alternatively, striking the allegations of the complaint against it, and granting it the costs and disbursements of this action.

_____

Sherman Gray

Sworn to before me this

day of , 1974.

_____

Notary Public

Exhibit A

HARRY ERNEST RUBENS

CONNECTICUT 06880
GORHAM ISLAND
WESTPORT
TEL 203-227-9150

TELI 201 PLAZA 8 1956-8
2 Sutton Place South New York City
NEW YORK 10022

January 19,1970

Merrill Lynch, Pierce
Fenner & Smith Inc.
70 Pine Street
New York, N. Y. 10005

Att: Richard - C Gradwohl
Re: Accounts 176 22306
176 26560

Gentlemen:

In connection with our short against the box transaction in which we delivered 3000 shares of Great Wester Financial to your firm, we would like an explanation for the various interest charges at high interest rates.

Our attorney advises us that no basis for an interest charge exists in a transaction which is fully secured and without financial risk to your firm.

We would like to know the actual mechanism of title change to our stock. Were our shares registered in the firm name and deposited in the firm pool of stocks from which the shorted stock was withdrawn?

Also we would like to know why the cash received from the sale is retained by your firm. Can it be that your firm actually borrows this money to finance other margin accounts for which a further interest charge is made?

Your explanations will be of interest to us.

Yours very truly,

Harry Ernest Rubens

Trustee

Exhibit B

February 17, 1970

Mr. Harry Ernest Rubens
2 Sutton Place South
New York, N Y.

Dear Mr. Rubens:

Your letter of January 19, 1970 has come to me for reply. I am sorry that it has taken so long to answer it. The reason for this is that your questions have made us explore again the rather complicated area in our tax laws and the margin regulations which covers "short sales against the box".

Let me start the explanation by telling you that our firm cannot offer you any tax advice. Therefore, anything we say about tax regulations here should be checked thoroughly with your lawyer to see if it applies to your individual position. It has been our experience that most clients sell short against the box to postpone the reporting of an unrealized profit from one year to another. The Internal Revenue Service regulations treats the consequent short and long positions as separate, provided that two different certificates are involved. This is the main reason why our firm normally borrows stock to deliver on the short sale. This borrowing of additional stock carries an interest charge which we pass on to the client. In addition, most of the credit balance resulting from the short sale serves as collateral for the loan of the additional stock.

On the other hand, the Federal Reserve Banks' regulations on margin accounts says that the short sale of a security versus a long position in that security in effect liquidates the client's position in that security. We must, therefore, apply the same margin rules covering any long sale to a short sale against the box.

It must be clear to you therefore that if in past you initiated this short sale against the box for tax reasons, you had to borrow stock in order to maintain two separate positions within the meaning of the I. R. S. regulations. This loan is the basis for our charges and, in addition, the use of your credit balance for other purchases, etc., would have subjected you to further interest charges under the normal margin rules.

If you have any further questions on this problem I would be glad to answer them.

Very truly yours

B

Sherman Gray - Vice President
Manager, Foreign Department

SG:nm

Exhibit C

HARRY ERNEST RUBENS

FOREIGN DEPT.
1970 FEB 25 AM 11:27

CONNECTICUT 06880
GORHAM ISLAND
WESTPORT
TEL 203 - 227-8158

TELI 201 PLAZA 8-1556-9
2 Sutton Place South New York City
NEW YORK 10022

February 22,1970

Sherman Gray, Vice President
Merril Lynch Pierce Fenner & Smith
70 Pine Street
New York, N. Y. 10005

Dear Mr. Gray:

You did not answer most of the questions I asked in my letter of January 19,1970.

If these interest charges are not restored to my account, I will withdraw my account with Merril Lynch and take the necessary steps to recover these sums.

You say you have to charge me interest as a favor to me in my tax situation. Who asked you to? I regard the interest charges as an unjust unrichment on your part, at my expense. If you simply didnot stick the interest into Merril Lynch's pocket, who did you pay it to.? For example, the person from whom you allegedly borrowed the stock from, did he receive any of the interest. What did you pay him? Did he know that you were borrowing the stock?

I dont object to the fiction of borrowing stock but where you own my stock, at least the legal title, you certainly didn't need any collateral, since you were insured against any loss. I only object to your making me pay for the technique of selling my stock short. If it didn't cost you anything, why charge me? No regulation makes it necessary to charge me interest without any risk on your part.

Yours very truly,

Harry Ernest Rubens

C

Exhibit D

February 26, 1970

Mr. Harry Ernest Rubens
2 Sutton Place South
New York, N. Y.

Dear Mr. Rubens:

Today I received your letter of February 22nd. Yesterday, as well, I received your telephone message, but I was unable to reach you in several tries. It is too bad, because I think a short conversation would serve to answer all your questions whereas my letters are apparently not doing this job.

Because your letter seems to imply that the way we handle a short sale against the box is unethical, I hasten to assure you that this procedure is carried out within all the New York Stock Exchange regulations and under their general supervision. If, in your opinion, these regulations give us an unfair advantage over you, then your complaint would be better directed to the Exchange or to the S. E. C.

From your letter, it is now clear to me that when you established the short position against the box, you did not fully understand our procedures. This being the case, and as an exception to our policy, we will be glad to refund the interest we charged you. We want you to understand, however, that we will not do this again if you decide to take a similar position in the future and, secondly, we will, if asked, disclose the full history of this corrected transaction to the Internal Revenue Service. Please let us have your instructions on this matter.

Now, to answer your questions. We did in fact borrow stock to deliver on your short sale. It is not "fiction". Depending on the current supply of that particular stock, we either borrowed from another brokerage house or from one of our own margin customers. If the stock came from a margin customer, the loan was made at no interest charge under a signed hypothecation agreement. If the stock came from another brokerage house, we followed the usual arrangement of pledging cash or other securities as collateral and paying an interest charge.

Please let me know if these proposals are agreeable to you.

Very truly yours

Sherman Gray - Vice President
Manager, Foreign Department

SG:mm

Exhibit E

HARRY ERNEST RUBENS

FOREIGN DEPT.
1970 MAR 30 AM 11:16

CONNECTICUT 06880
GORHAM ISLAND
WESTPORT
TEL 203 · 227-0158

TEL 201 PLAZA 8-1558-9
2 Sutton Place South New York City
NEW YORK 10022

MARCH 20, 1970

SHERMAN GRAY, VICE PRESIDENT
MERRILL LYNCH, PIERCE, FENNER & SMITH, Inc

Dear Mr Gray:

Thank you for your letter of Feb 26, 1970 which I am answering from the Canary Islands, where your letter was forwarded.

I appreciate your willingness to refund the interest charges. I will attempt to correct the situation when I get back. As for informing the Internal Revenue Service of the history of this transaction, I am surprised that you should have to ask me about it. Why would I want you to suppress any financial transaction I have had with your firm? (or any other.)

As for my efforts to get the facts, I note that your reply is general and not specific. "If the stock came from a margin account, etc". What I wanted to know was: Did you pay an interest charge and to whom and how much? I would not want Merrill Lynch to suffer a loss on any transaction of mine. I will call you upon my return, mais si.

Yours very truly

Harry Ernest Rubens

E

Exhibit F

August 26, 1970

Mr. Harry Ernest Rubens
2 Sutton Place South
New York City, New York

Dear Mr. Rubens:

It has been some months since we have corresponded about the "short sale against the box" position which you maintained with us last year.

You may remember that my last letter of February 26, 1970, offered to refund the interest we had charged you. We have now calculated this figure and it amounts to $1254.33. We have directed our Accounting Department to credit your account with this figure and it should appear on your statement of account for this month.

At your convenience, I would very much like to have your assurance that the matter is now closed to your satisfaction and that you will, in the future, conform to the conditions described in our letter of February 26, 1970.

Very truly yours,

Sherman Gray - Vice President
Manager, Foreign Department

SG/ma

F

Exhibit G

CABLE: SOMMERS-NEWARK

HARRY ERNEST RUBENS (N. Y. BAR)
HARRY SOMMERS (N. J. BAR)
HOWARD NEAL SOMMERS (N. J. BAR)

ATTORNEYS AND COUNSELORS-AT-LAW

PATENTS
TRADEMARKS
COPYRIGHTS

PLEASE REPLY TO:

☐ ~~744 Broad Street, Newark, N. J. 07102~~
TEL. (201) 623-6430

☐ 2 Sutton Place South, New York, N. Y. 10022
TEL. (212) 758-1550

Sept.30,1970

Sherman Gray, Vice President
Merrill Lynch

Dear Mr. Gray:

In reply to your letter of August 26,1970, I have received the return of the interest charged to my account and I thank you for your willingness to return this sum.

However, I regard the rules which you brokers have concocted to benefit yourselves in a short against the box, as obnoxious and frankly not in the customers interest. Where a bookkeeping transaction has not cost the broker anything, why should the broker pile on a charge in the customer's account.

Accordingly I am going to try and find a broker who when he borrows a stock from one of his accounts and takes title to the same stock from a customer, which obviously creates no liability for anyone, will not charge the customer, more especially when the transaction is one, designed to meet the IRS requirements, for the customer's benefit.

I note that in the Robinson & Co failure, the brokers borrowed stock from customer's accounts pledging the stock for bank loans, without the redeeming feature of offsetting the borrowed stock with the collateral of the "in the box" stock. And the customers are all out in the cold. So the self arrived at rules which you quote to me permit losses to occur to customers, which cannot occur where I put up my stock to protect the owner of the borrowed stock.

Yours sincerely,

Harry Ernest Rubens

G

Exhibit H

October 13, 1970

Mr. Harry Ernest Rubens
2 Sutton Place South
New York, N. Y.

Dear Mr. Rubens:

Thank you very much for your letter of September 30, 1970.

We have taken careful note of your comments on our procedures for handling a "short against the box" transaction. While we do not agree with you, we do not think it sensible to continue the general argument, especially in view of the fact that we have now settled the specific problem between us.

We do send you our assurances, however, that within our own policies we will continue to serve you as best we can.

Very truly yours

Shennan Gray - Vice President
Manager, Foreign Department

SG:nm

H

Exhibit I

CABLE: SOMMERS-NEWARK

HARRY ERNEST RUBENS (N. Y. BAR)
~~HARRY SOMMERS (N. J. BAR)~~
~~HOWARD NEAL SOMMERS (N. J. BAR)~~

ATTORNEYS AND COUNSELORS-AT-LAW

PATENTS
TRADEMARKS
COPYRIGHTS

PLEASE REPLY TO:

☐ ~~744 Broad Street Newark, N. J. 07102~~
TEL: (201) 623-6430

☐ 2 Sutton Place South, New York, N. Y. 10022
TEL: (212) 758-1558

November 13,1970

Richard G. Gradwohl
Merrill Lynch PF&S, Inc.
70 Pine Street
New York, N. Y. 10005

Dear Mr. Gradwohl:

I enclose my checks for settlement of November 16 bill for 1000 shares of Braniff Airways amounting to $7281.30 and for the November 17 bill for another 10000 shares amounting to $7155.

Please deposit these checks at the end of the business day of the 16 and 17 respectively to permit me to deposit sufficient cash to cover these checks from my savings account.

I also enclose my accountant's tape showing the amount of interest charged me on the short against the box was $1322.04. The credit given me was $1254.33. It appears to be $67.71 short. Can you check this?

Thanks for your cooperation.

Sincerely,

Harry Ernest Rubens

I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS, JEANNE RUBENS Plaintiffs, -against- NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; members MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., Defendants.	73 Civ. 3557 (CLB,Jr.) NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavit of Harry Ernest Rubens and the exhibits annexed thereto, the undersigned will move this Court before the Hon. Charles L. Brieant, Jr.., in Room 706 of the United States Courthouse, Foley Square, New York, New York on June 5, 1974 at 9:30 A.M. or as soon thereafter as counsel may be heard for an order granting summary judgement in their favor against defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated, pursuant to Rule 56, F.R. Civ. P.

Dated: New York, New York
May 23, 1974

Peter L. Berger

Peter L. Berger, Esq.
Attorney for plaintiffs
370 Lexington Avenue
New York, New York 10017
Tel: (212) 685-5766

To: Brown, Wood, Fuller,
Caldwell & Ivey
Attorneys for defendant Merrill
Lynch, Pierce, Fenner & Smith,Inc.
One Liberty Plaza
New York, New York 10006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY ERNEST RUBENS, JEANNE RUBENS Plaintiffs, -against- NEW YORK STOCK EXCHANGE, INC., KIDDER, PEABODY & CO., INC., members MERRILLY LYNCH, PIERCE, FENNER & SMITH, INC., Defendants.	:	73 Civ. 3557 (Brieant, J.) 9(g) STATEMENT

The following material facts present no genuine issue to be tried:

1. That plaintiffs turned over to defendant 3000 shares of Great Western Financial Corp. (GWF) with instructions to sell plaintiffs' equitable interest in said shares.

2. That defendant sold 3000 shares of GWF receiving $69,000 for said shares, withholding the proceeds.

3. That defendant used the selling price of said shares in its business and financially benefitted thereby.

4. That during this period, defendant charged plaintiffs interest because the current market price of said shares increased in value.

5. That plaintiffs gave defendant $6000 in cash to reduce the interest rates charged.

6. That only part of the interest charged plaintiffs was returned.

WHEREFORE, plaintiffs move this court for summary judgement in its favor pursuant to Rule 56, F. R. C. V. P.

Dated: New York, New York
May 17, 1974

Peter L. Berger
Attorney for plaintiff
370 Lexington Avenue
New York, New York 10017
Tel: (212) 685-5766

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

HARRY ERNEST RUBENS, JEANNE RUBENS,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; members MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,

Defendants.

----------X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PLANTIFF'S AFFIDAVIT IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST MERRILL LYNCH, AND IN OPPOSITION TO DEFENDANTS MOTION

Harry Ernest Rubens, being duly sworn deposes and says:

1. I am one of the plaintiffs herein, a retired engineer and patent attorney, now philanthropically engaged as a bio-medical engineer at the University of Miami and as consultant to the Institute of Applied Biology.

2. I have examined the plaintiffs memorandum in support of their motion for summary judgment and state that the contents thereof are true based upon my own knowledge and belief.

3. The transaction involved with Merrill Lynch resulted from an attempt to protect an investment in 3000 shares of Great Western Financial Corporation (GWF) then valued at $69,000 in the market.

Your deponent was informed by the Merrill Lynch representative that by a "box" sale, plantiffs could sell their shares at this price, while retaining an option to treat the sale and subsequent repurchase as a short term capital gains, or by not repurchasing the shares, treat the sale as a long term capital gains. The option involving the repurchase of the shares would result in twice the tax rate but possibly a lower total tax. The "box" sale proved to be disadvantageous over a direct sale largely because defendant's representative kept urging your deponent to repurchase the shares when they dropped from 23 to 19, although plaintiff had determined they were only worth 12, the figure to which they ultimately dropped. As a result, plaintiffs lost 2/3 of the possible gains, paid twice the tax rate, and twice the brokerage fee.

Your deponent now believes that the defendant maintained a private undisclosed interest in GWF shares, which was unknown to plaintiffs and a probably violation of the Security Exchange Act. Thus it was to defendants interest to get plaintiff to repurchase the shares at 19, and it so urged plaintiffs.

At no time were plaintiffs informed that the shares sold were "borrowed" from third parties, and that a liability existed to advance cash to defendant in addition to defendant retaining the selling price, when the market price of said GWF shares increased thereafter.

Plaintiffs had committed themselves to selling their shares at 23, and had no interest in any future increase in price thereof.

Yet after the sale, plaintiffs were presented demands for additional cash, or in lieu thereof, were charged interest up to 9 3/4% as if plaintiffs had borrowed money from defendant. When the interest charges reached in excess of $400 in one month, plaintiffs turned over $6000 to defendant, plaintiffs Exhibit A, which reduced the interest charged plaintiff the following month to $353.02 (Exhibit B) totalling $1,321.84, at which time plaintiff repurchased the same shares, and closed the transaction.

The defendant in explanation of its conduct is that the shares sold were actually borrowed from third parties to whom the selling price is given. Moreover, such "lender" receives the money value of the shares during the loan. Consequently, there is a "mark to the market" to determine the current money value of the shares which the seller of the shares must supply.

Plaintiffs listened in disbelief to this explanation and determined at the end of the transaction to demand an accounting See Exhibit A of defendants affidavit accompanying its motion.

In reply, defendant has never shown plaintiffs:

1. That the shares sold were borrowed from third parties,

2. That the current market price as determined periodicall thereafter were turned over to the third parties,

3. That the shares sold were previously registered in the name of said third party.

All three items are missing from the record.

As was established in the concurrent claim against Kidder Peabody, plaintiffs shares are registered in the name of the broker and plaintiff is given an accounting for the shares turned over (the "long"position). The shares are then deposite in bulk in the broker and the "box" sale is made.

In the Kidder box sale, plaintiffs were able to trade that among the shares sold from the "box" were shares previously registered in plaintiffs name turned over to the broker for the sale.

This however is not considered a sale of plaintiffs legal title, since the "bulk" shares are normally without identification, although the accounts of defendant still credits plaintiffs with ownership of the original shares.

That such shares have been actually sold is made clear when plaintiff decides he wants his shares back. To obtain them he must go into the market and repurchase the shares at the market price which are then delivered to plaintiff. This is known as "covering" the box sale, a device which the IRS accepts as a return of plaintiffs original shares.

Plaintiffs has no quarrel with defendants selection of terminology in explanation of the sale of plantiffs shares. What plaintiffs object to is the technique of exposing plantiffs to an unlimited liability if the market price continues to rise indefinitely, a consequence of someone acquiring a control of most of the particular shares. Thus, if the 3000 shares had jumped in price 150 points after plaintiffs sale of its interest, plaintiffs would have been exposed to the financial responsibility of advancing $450,000 to the defendant; and all plantiffs wanted to do was sell its interest in its shares.

The defendants in applying this technique to a "box" sale are employing a mechanism which is applicable to someone selling shares not possessed by the seller, i.e. he is "short" the shares sold.

What then takes place is a pure gambling transaction where the seller of the short shares must reacquire the shares sold to place the broker in a "whole" position. Thus, the fiction of "borrowing" and "mark to the market" has some applicability. But not in plaintiffs case, since plantiffs delivered to the defendant the shares sold.

The plantiffs should have no further liability. The only charge that can be legally made is for the brokerage fee for selling the same. No interest, no mark to the market. No future liability for possible fantastic sums.

In short, plaintiffs were trying to protect their investment, not to gamble by selling something they did not possess.

Apparently by arrangement between the New York Stock Exchange, Inc. and its members, defendants brokers are permitted to establish what is essentially a false transaction involving false charges giving the broker defendants rights which are clearly improper and fraudulent.

Such arrangement constitutes a concerted action to defraud investors. Such arrangement involving a sale of an investors interest must be terminated by this court.

Harry Ernest Rubens

Sworn to before me this

[illegible] day of May, 1974.

Notary Public

HENRY A. MARZULLO, JR.
Notary Public, State of New York
31-4516150
Qualified in New York County
Commission Expires March 30, 1975

189

SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
061-07-8066	1	07 25 1969	176 26560

* MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2237 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

DATE	BOUGHT OR RECEIVED	SOLD OR DELIVERED	DESCRIPTION	M	PRICE	DEBIT	CREDIT
			BALANCE JUNE 27				67135 60
7 3		3000	GRT WSTN UNITED CORP AS OF 06-27		CJE		
7 3	3000		GT WEST FIN CORP AS OF 06-27		CJE		
7 22			INT TO 07 18 9 3/4 %			353 02	
7 24	3000		GRT WSTN UNITED CORP AS OF 06-27		CJE		
7 24		3000	GT WEST FIN CORP AS OF 06-27		CJE		
			CLOSING BALANCE				66782 58
		3000	GT WEST FIN CORP				

190

Margins

SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
061-07-8066	1	06 27 1969	176 22306

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE URGE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

PRINTED IN U.S.A.

DATE	BOUGHT OR RECEIVED	SOLD OR DELIVERED	DESCRIPTION	PRICE	DEBIT	CREDIT	BALANCE
			BALANCE MAY 29	M			85 92
6 11			INT TO 05 10 8 3/4 %				38
			SAME RATE AS DR INT				
			DEPOSIT			6000 00	
6 11			INT TO 06 20 9 3/4 %				14 86
6 23			SAME RATE AS DR INT				
			CLOSING BALANCE				6101 16
		266	A M K CORP				
		3000	GT WEST FIN CORP				

11 A //

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

HARRY ERNEST RUBENS, JEANNE RUBENS,:

Plaintiffs :

-against- :

NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; members MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., :

Defendants. :
----------X

CIVIL ACTION

No. 73 Civ. 3557 (CLB, Jr.)

REPLY AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SHERMAN GRAY, being duly sworn, deposes and says:

1. I am a Vice President of defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch) and I make this affidavit to supplement my prior affidavit of May 3, 1974 in support of Merrill Lynch's motion for summary judgment or to strike the complaint in this action.

2. The plaintiffs maintained a short against the box position of 3,000 shares of Great Western Financial Corporation from on or about June 27, 1968 to January 21, 1970. During that time certain amounts of interest were charged to their account number 176-26560. This interest was charged because the plaintiffs, through Merrill Lynch, borrowed 3,000 shares to effectuate the short against the box. During that time plaintiffs' account number 176-22306 was credited with certain amounts of interest whenever the market price of Great Western Financial Corporation declined below their short sale price. On or about August 27, 1970 Merrill Lynch credited their account number 176-22306 with an additional amount of $1,254.33 in order to return all the interest which had been charged to the Rubens, as explained in my affidavit of May 3, 1974.

3. The monthly statements of the Rubens' account number 176-26560 for the period from July, 1968 through January, 1970 are annexed hereto as Exhibit A. The monthly statements of the Rubens' account number 176-22306 for the period May, 1969 through November, 1969 and for August, 1970 are annexed hereto as Exhibit B. The interest debited and credited to these accounts, as shown on these monthly statements, is summarized as follows:

Month	Interest charged to Account No. 176-26560	Interest credited to Account No. 176-22306
July, 1968	11.50	
Aug., 1968	79.95	
Sept., 1968	105.91	
Oct., 1968	34.14	
Oct., 1968	39.42	
Nov., 1968	67.24	
Dec., 1968	44.06	
Dec., 1968	34.32	
Jan., 1969	19.69	
Jan., 1969	11.03	
Feb., 1969	25.70	
Feb., 1969	13.55	
Mar., 1969	7.39	
Apr., 1969	90.79	
May, 1969	150.13	.56
June, 1969	53.57	14.86
June, 1969	24.63	.38
July, 1969	353.02	39.78
Aug., 1969	125.69	11.85
Sept., 1969	11.88	.04
Oct., 1969	15.28	.05
Nov., 1969	3.15	.07
Aug., 1970		1254.33
TOTAL	1322.04	1321.87

4. The discrepancy of seventeen cents between the debits and credits shown above was apparently caused by a mathematical error.

WHEREFORE, defendant Merrill Lynch respectfully moves this Court for an order granting summary judgment in its favor or, alternatively, striking the allegations of the complaint against it, and granting it the costs and disbursements of this action.

SHERMAN GRAY

Sworn to before me this
31 day of May, 1974.

Notary Public

THOMAS J. MULLANEY
Notary Public, State of New York
No. 31-0252355
Qualified in Nassau County
Cert. Filed in New York County
Commission Expires March 30, 1976

Exhibit A

194

ORIGINATING OFFICE COPY

BANK OR BDE NO OR SEGREGATION	SOCIAL SECURITY OR IDENTIFICATION NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
=	061-07-3[illegible]	1	01 30 1 70	176 26560

410 =

MR HARRY ERNEST RUDENS &
MRS JEANNE RUDENS
2 SUTTON PL/90
2237 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE DECEMBER 31	M			78392 32
1	19			TFR TO 17622306	JE	21247	32	
1	21	2000		GT WEST FIN CORP	19	36395	00	
				COVER SHORT				
1	21	200		GT WEST FIN CORP	19	3852	00	
				COVER SHORT				
1	21	700		GT WEST FIN CORP	19	13482	00	
				COVER SHORT				
1	21	100		GT WEST FIN CORP	19	1926	00	
				COVER SHORT				
				CLOSING BALANCE				0 00

ORIGINATING OFFICE CC

BANK OR BCY NO. OR DESIGNATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
-	061-07-8066	1	12 31 1969	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2237 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

AS REQUIRED BY LAW, INTEREST HAS REPORTED TO THE INTERNAL REVENUE SERVICE THE CREDIT INTEREST ON INVESTED FUNDS REGISTERED BOND INTEREST AND DIVIDENDS WHICH WERE CREDITED TO YOUR ACCOUNT DURING THE YEAR INDICATED ABOVE. THE INTERESTS AND DIVIDENDS SO REPORTED ARE INDICATED ABOVE ON THIS STATEMENT.

				BALANCE NOVEMBER 28	M				78902
				CLOSING BALANCE					78902
			3000	GT WEST FIN CORP					
	DVD &	INT INCOME FOR		1969 REPORTED TO U.S. INT	REV SVC	DVD	NONE	INT	NONE

[redacted]

[redacted]

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
9 SUTTON PL/SO.
9237 NEW YORK NY 10022

11 24

BALANCE OCTOBER 31 78905 47
INT TO 11 21 9 344 X 15
CLOSING BALANCE 78902 32

3000 ST WEST FIN CORP

STATEMENT OF SECURITY ACCOUNT

[redacted]

[redacted]

MR HARRY JOSEPH HORN
6 ADELAIDE PARK
4661 CENTER MOURICHES LI N Y

BALANCE OCTOBER 31 11 99

CLOSING BALANCE 11 99

100 CONTL MATERIALS CORP
100 D C TRANSIT SYSTEM A
140 NUCLEAR CORP AM DEL
140
200 PAC INDUST INC PV2
20 PAN AMN WORLD AIRWAY

STATEMENT OF SECURITY ACCOUNT

[redacted]

ORIGINATING OFFICE COPY

BANK OR BDK NO. OR SEGREGATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-9060	1	10 31 1969	176 26560

MR HENRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/50
2237 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS SEE CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT

WE URGE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE SEPTEMBER 26	H				79920 75
10	27			INT TO 10 24 9 3/4 %			15	28	
				CLOSING BALANCE					78005 47
			3000	GT WEST FIN CORP					

198

ORIGINATING OFFICE COPY

BANK OR BDR NO. OR ABBREVIATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
-	041-07-3966	1	09 26 1969	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2237 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE AUGUST 29	M			78932 63
				INT TO 09 19 @ 3/4 %			11 88	
9	22			CLOSING BALANCE				78920 75
			3000	GT WEST FIN CORP				

199

ORIGINATING OFFICE COPY

SOCIAL SECURITY OR IDENTIFICATION NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
061-07-6966	1	08 29 1969	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2237 NEW YORK NY 10022

				BALANCE JULY 25	M			65782 58
8	1			TRF FM 17622306				6775 74
8	13			TFR FR 17627035	JE			6000 00
8	25			INT TO 08 22 9 3/4 %		125	69	
				CLOSING BALANCE				78932 63
		3000		GT WEST FIN CORP				

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE WISH YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

200

ORIGINATING OFFICE COPY

BANK CD DOC NO OR BRANCH/DEPT	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO	PERIOD ENDING	ACCOUNT NO.
	061-07-8066	1	07 25 1969	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2237 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN HAVING OCCASION, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

PRINTED IN U.S.A.

				BALANCE JUNE 27	M			67135 60
7	3		3000	GRT WSTN UNITED CORP		CJE		
				AS OF 06-27				
7	3	3000		GT WEST FIN CORP		CJE		
				AS OF 06-27				
7	22			INT TO 07 18 9 3/4 %			353 02	
7	24	3000		GRT WSTN UNITED CORP		CJE		
				AS OF 06-27				
7	24		3000	GT WEST FIN CORP		CJE		
				AS OF 06-27				
				CLOSING BALANCE				66782 58
			3000	GT WEST FIN CORP				

201

ORIGINATING OFFICE COPY

BRANCH OR SEGREGATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-6066	1	06 27 1969	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2237 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE URGE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE MAY 29	M			67213 80
6	11			INT TO 06 10 8 3/4 %		53	57	
6	23			INT TO 06 20 9 3/4 %		24	63	
				CLOSING BALANCE				67135 60
			3000	GT WEST FIN CORP				

202

ORIGINATING OFFICE COPY

BOOK OR DOC NO OR CLASSIFICATION	SOCIAL SECURITY OR IDENTIFICATION NO.	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-5066	1	05 29 1969	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

PRINTED IN U.S.A.

				BALANCE APRIL 25	M			67363	93
5	26			INT TO 05 23 8 3/4 %			150	13	
				CLOSING BALANCE				67213	80
			3000	GT WEST FIN CORP					

203

ORIGINATING OFFICE COPY

DATE OF STK DIV OR SECURITY CD	CUSTOMER ACCOUNT NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-8066	1	04 25 1969	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ASK YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "TRADE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

					BALANCE MARCH 28	M			67454 72
	4	21			INT TO 04 18 6 3/4 %		90	79	
					CLOSING BALANCE				67363 93
				3000	GT WEST FIN CORP				

ORIGINATING OFFICE COPY

DATE OF THIS STMT. OR SEGREGATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	071-07-0086	1	03 23 [illegible]	176 26560

[illegible] PARTY ERNEST ROGERS &
PAT JEANNE ROGERS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE FORWARD				67 72 65
3	20			INT TO 03 16 @ 1/4 %		13	98	
3	24			INT TO 03 21 @ 3/4 %		7	09	
				CLOSING BALANCE				67454 72
			3000	GT WEST FIN CORP				

205

ORIGINATING OFFICE COPY

SOCIAL SECURITY OR IDENTIFICATION NO.	PAGE NO	PERIOD ENDING	ACCOUNT NO.
061-07-8066	1	02 28 1969	176 26560

DR HARRY EBBERT RUBENS &
MRS JOANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN SHARE HOLDINGS, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE HAVE YOU TO RETAIN THIS STATEMENT TO USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "TYPE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE JANUARY 31	M			67361 30
2	24			INT TO 02 21 8 1/4 %		25	70	
				CLOSING BALANCE				67475 60
			3000	GT WEST FIN CORP				

LEDGER COPY

021-07-0044	1 02 21 1969	276 26560							
MR HARRY ERNEST ROBERTS E				BALANCE DECEMBER 31	N			67632	00
MRS LEANNE ROBBINS	1 10			INT TO 01 08 8 %			19	69	
2 SUTTON SQ #3D	1 27			INT TO 01 24 8 1/4 %			11	03	
2002 NEW YORK NY 10022				CLOSING BALANCE				67501	44
			3000	GT WEST FIN CORP					

STATEMENT OF SECURITY ACCOUNT

[redacted]

LEDGER COPY

236-20-0707	1 01 29 1969	276 26561							
MR HARRY JOSEPH [illegible]				BALANCE DECEMBER 31				121	91
3 ARGARIDE PLACE	1 3			25 CONS EL IND PVS	4 DIV			6	25
4041, CENTER ROUNDS[illegible] LE N Y	1 14		25	CONS ELECT IND PVS	41 5/8			1023	54
	1 14		100	DEL & WEBB CORP	24 1/2			1424	72
	1 23	100		CONTL MATERIALS CORP	6	613	00		
	1 23	100		D C TRANSIT SYSTEM A	4 7/8	499	38		
	1 28			DEPOSIT 01/27				1000	00
	1 30	200		PAC INDUST INC PV2	11	2236	00		
				CLOSING BALANCE				228	44
		100		CONTL MATERIALS CORP					
		100		D C TRANSIT SYSTEM A					
		10		FOXBORO CO					
		40		NUCLEAR CORP AM DEL					
		200		PAC INDUST INC PV2					
		20		PAN AMN WORLD AIRWAY					

STATEMENT OF SECURITY ACCOUNT

[redacted]

207

601-07-0066 | 1 | 02 31 1969 | 276 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2332 NEW YORK NY 10022

LEDGER COPY

			BALANCE DECEMBER 31	M		67532 08
1	10		INT TO 01 08 8 %		19 69	
1	27		INT TO 01 24 8 1/4 %		11 03	
			CLOSING BALANCE			67501 36
		3000	GT WEST FIN CORP			

STATEMENT OF SECURITY ACCOUNT

[redacted]
[redacted]

304-28-8787 | 1 | 02 31 1969 | 276 26561

MR HARRY [redacted]
6 ADELAIDE PARK
4041 CENTER NOURISCHE LI N Y

LEDGER COPY

			BALANCE DECEMBER 31			121 91
1	3		25 CONS FL IND PV5	DIV		6 25
1	14		CONS ELECT IND PV5	41 5/8		1023 94
1	14	100	DEL E WEBB CORP	14 1/2		1424 72
1	23	100	CONTL MATERIALS CORP	6	613 00	
1	23	100	D C TRANSIT SYSTEM A	4 7/8	499 38	
1	28		DEPOSIT 01/27			1000 00
1	30	200	PAC INDUST INC PV2	11	2236 00	
			CLOSING BALANCE			228 44
		100	CONTL MATERIALS CORP			
		100	D C TRANSIT SYSTEM A			
		10	FOXBORO CO			
		40	NUCLEAR CORP AM DEL			
		200	PAC INDUST INC PV2			
		20	PAN AMN WORLD AIRWAY			

STATEMENT OF SECURITY ACCOUNT

[redacted]

208

ORIGINATING OFFICE COPY

DTMF OR STMF NO. OR REGISTRATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
-	061-07-9066	1	12 31 1968	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE URGE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

AS REQUIRED BY LAW INTEREST HAS REPORTED TO THE INTERNAL REVENUE SERVICE THE CREDIT INTEREST ON INVESTED FUNDS, REGISTERED BOND INTEREST AND DIVIDENDS OWNED WERE CREDITED TO YOUR ACCOUNT DURING THE YEAR INDICATED ABOVE. THE AMOUNT(S) AND DIVIDEND(S) SO REPORTED ARE INDICATED ABOVE ON THIS STATEMENT.

				BALANCE NOVEMBER 29	M			67610	46
12	6			INT TO 12 04 7 1/2 %		44	06		
12	23			INT TO 12 19 7 3/4 %		34	37		
				CLOSING BALANCE				67532	09
			3000	GT WEST FIN CORP					
DVD & INT INCOME FOR 1968 REPORTED TO U.S. INT REV SVC						DVD	NONE	INT	NONE

209

SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD CLOSING	ACCOUNT NO.
061-07-8064	1	11 22 1968	176 26560

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

ORIGINATING OFFICE COPY

				BALANCE OCTOBER 25	M			67677 70
11	25			INT TO 11 22 7 1/2 %		67	24	
				CLOSING BALANCE				67610 46
		3000		GT WEST FIN CORP				

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING REMITTANCES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

210

ORIGINATING OFFICE COPY

BASE ON SOC SEC OR IDENTIFICATION NO.	SOCIAL SECURITY OR IDENTIFICATION NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
=	061-07-8066	1	10 25 1966	176 26560

MR HARRY ERNEST ROBENS &
MRS JEANNE ROBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE SEPTEMBER 27	M			67751	25
10	2			INT TO 09 30 7 3/4 %			34	14	
10	21			INT TO 10 18 7 1/2 %			39	42	
				CLOSING BALANCE				67677	70
			3000	GT WEST FIN CORP					

211

ORIGINATING OFFICE COPY

SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NO.	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
061-07-8066	1	09 27 1968	176 .656

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

				BALANCE AUGUST 30	M			67657 17
9	23			INT TO 09 23 7 3/4 %		105	91	
				CLOSING BALANCE				67751 26
			3000	GT WEST FIN CORP				

STATEMENT OF SECURITY ACCOUNT

WHEN WRITING REGARDING THIS ACCOUNT, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE MAINTAINING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

212.

ORIGINATING OFFICE COPY

SHARE OR SEC NO OR DESCRIPTION	SEC NO OR DESCRIPTION	PAGE NO	PERIOD ENDING	ACCOUNT NO.
	361-07-[illegible]	1	8 31 1968	176 26589

MR HARRY E[illegible]ST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE MAINTAINING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE JULY 26	M			67937 12
8	26			INT TO 08 23 7 3/4 %		79	55	
				CLOSING BALANCE				67857 17
			3000	GT WEST FIN CORP				

213

			ACCOUNT NO.
095-09-9290	1	07 24 1968	176 26960

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PL/SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE HAVE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

7	1		3000	GT WEST FIN CORP SHORT SALE	N 23		CD	67948
7	22			INT TO 07 19 7 3/4 % CLOSING BALANCE		11	SC	67937
			3000	GT WEST FIN CORP.				

Exhibit B

ORIGINATING OFFICE COPY

	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-8066	1	08 28 1970	176 22306

433 ** MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2237 NEW YORK NY 10022

		8 27		BALANCE JULY 31	40 2-
				ADJ INT FM JULY	INT 1254 33
				1968 TO JAN 1970 AT	
				VARIOUS RATES	
				CLOSING BALANCE	1294 53
3000			3000	GT WEST FIN CORP	
268			268	UNITED BRANDS CO	

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

PRINTED IN U.S.A.

216

BANK OR BRK NO OR DEALER NO	SOCIAL SECURITY OR IDENTIFICATION NO.	PAGE NO	PERIOD ENDING	ACCOUNT NO.
	061-07-8006	1	11 28 1969	176 22306

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2237 NEW YORK NY 10022

268
3000

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

BE SURE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

					ORIGINATING OFFICE
11	24		BALANCE OCTOBER 31	M	
			INT TO 11 21 9 3/4 %		
			SAME RATE AS DR INT		
			CLOSING BALANCE		11
		268			
		3000	A H K CORP		11
			GT WEST FIN CORP		

ORIGINATING OFFICE COPY

CUSIP OR DOT NO. OR DESIGNATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-8066	1	10 31 1969	176 22306

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2237 NEW YORK NY 10022

268
3000

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE.

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

PRINTED IN U.S.A.

				BALANCE SEPTEMBER 26	M			11 [illegible]
				INT TO 10 24 9 3/4 %				05
10	27			SAME RATE AS DR INT				11 94
				CLOSING BALANCE				
			268	A M K CORP				
			3000	GT WEST FIN CORP				

218

ORIGINATING OFFICE COPY

BANK OR OTHER NO. OR SEGREGATION	SOCIAL SECURITY OR IDENTIFICATION NO.	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
-	061-07-9165	1	09 29 1969	176 22336

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2237 NEW YORK NY 10022

268
3000

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS. ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE URGE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE AUGUST 29	H			11	55
				INT TO 09 19 9 3/4 %					04
9	22			SAME RATE AS OR INT				11	89
				CLOSING BALANCE					
		268		A M K CORP					
		3000		GT WEST FIN CORP					

219

ORIGINATING OFFICE COPY

BANK OR BSA NO OR SEGREGATED	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO	PERIOD ENDING	ACCOUNT NO.
	061-07-3066	1	08 29 1969	176 22306

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2237 NEW YORK NY 10022

248
3000

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT

WE URGE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE FENNER & SMITH INC

PRINTED IN U.S.A.

				BALANCE JULY 25	M	6275 74	6275 74
8	1			TRF TO 17626560			
8	25			INT TO 08 22 9 3/4 %			11 85
				SAME RATE AS PR INT			
				CLOSING BALANCE			11 85
		268		A M K CORP			
		3000		GT WEST FIN CORP			

220

ORIGINATING OFFICE COPY

BANK OR BSR NO. OR SEGREGATION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-8066	1	07 25 1969	176 22306

* MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2237 NEW YORK NY 10022

268
3000

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

BE SURE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS.

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

PRINTED IN U.S.A.

				BALANCE JUNE 27	M			6101 16
7	14			2200 RK ORGNZ A ADR	* DIV			111 32
7	14			2200 RK ORGNZ A ADR	TAX	16	72	
7	15			268 AMK CORP COM	* DIV			40 20
7	22			INT TO 07 18 9 3/4 %				39 78
				SAME RATE AS OR INT				
				CLOSING BALANCE				6275 74
		268		A M K CORP				
		3000		GT WEST FIN CORP				

221

ORIGINATING OFFICE COPY

SHARE OR STOCK NO. OR DESCRIPTION	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
	061-07-5066	1	06 27 1969	176 22306

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
NEW YORK NY 10022

165
2232

268
3000

STATEMENT OF SECURITY ACCOUNT

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS

FOR DESCRIPTION OF SYMBOLS IN "PRICE" COLUMN AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

PRINTED IN U.S.A.

			BALANCE MAY 29	M		85 92
			INT TO 06 10 8 3/4 %			38
6	11		SAME RATE AS DR INT		6000	00
			DEPOSIT		14	56
6	11		INT TO 06 20 9 3/4 %			
6	23		SAME RATE AS DR INT		6101	16
			CLOSING BALANCE			
		268	A M K CORP			
		3000	GT WEST FIN CORP			

222

ORIGINATING OFFICE COPY

BANK OR BKR. NO. OR BRANCH OFFICE	SOCIAL SECURITY OR IDENTIFYING NUMBER	PAGE NO.	PERIOD ENDING	ACCOUNT NO.
—	061-07-8056	1	05 29 1969	176 22306

MR HARRY ERNEST RUBENS &
MRS JEANNE RUBENS
2 SUTTON PLACE SO
2232 NEW YORK NY 10022

STATEMENT OF SECURITY ACCOUNT

268
3000

WHEN MAKING INQUIRIES, PLEASE MENTION YOUR ACCOUNT NUMBER AND ADDRESS ALL CORRESPONDENCE TO THE OFFICE SERVICING YOUR ACCOUNT.

WE ADVISE YOU TO PRESERVE THIS STATEMENT FOR USE IN PREPARING INCOME TAX RETURNS

FOR DESCRIPTION OF SYMBOLS & "PUSH" COUPONS AND OTHER MATTERS SEE REVERSE SIDE

MERRILL LYNCH,
PIERCE, FENNER & SMITH INC

				BALANCE APRIL 25	M			72 04
				400 RANK ORGNZTN A	•	DIV		22 68
5	2			400 RANK ORGNZTN A		TAX	9 36	
5	2			ITEMS CODED TFD WERE				
				TF TO 17626980				
5	12		2200	RANK ORGNZTION A ADR		TFD		
5	12		400	RANK ORGANIZTN A FN		TFD		
5	12		500	SCIENTIFIC INDUST		TFD		
5	12		125	SCIENTIFIC ENVRNMNTL		TFD		
5	12		100	SIRCOR SCIENTIFC INC		TFD		
5	12			INT TO 05 23 8 3/4 %				56
5	26			SAME RATE AS DR INT				
				CLOSING BALANCE				85 92
		268		A M K CORP				
		3000		GT WEST FIN CORP				

Copy July 16, 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -X

HARRY ERNEST RUBENS and JEANNE RUBENS,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE, INC.; KIDDER, PEABODY & CO., INC.; MEMBERS, MERRILL LYNCH PIERCE FENNER & SMITH, INC.,

Defendants.

- - - - - - - - - - - - - - - - - - - -X

73 Civ. 3557-CLB

MEMORANDUM AND ORDER

Brieant, J.

In this action by customers against a stock broker ("Merrill Lynch"), the broker, by notice of motion dated May 7, 1974 seeks summary judgment in its favor. By notice of motion dated May 23, 1974, plaintiffs seek the same relief.

By a memorandum decision dated March 18, 1974, this Court granted summary judgment in favor of co-defendant Kidder, Peabody & Co. No final judgment was directed at that time.

Stripped of the pejorative description set forth in the affidavit of plaintiff Harry Ernest Rubens, sworn to May 23, 1974,

it appears that plaintiffs on July 3, 1969 owned 3,000 shares of Great Western Financial Corp. ("the shares"), which they delivered on that date into their margin account with their stockbroker, Merrill Lynch, etc. On the same date they sold 3,000 shares thereof "short against the box" for $69,000.00. This was not a "pure gambling transaction" as plaintiff's affidavit characterizes a routine short sale where there are no shares in the box to begin with, and seller's liability is unlimited. Rather, it was a lawful and permissible way to reconstitute an ordinary sale into a short sale, so as to vary sellers' income tax consequences. The short sale was covered on about January 21, 1970.

While the short sale remained open and until it was covered on or about January 21, 1970, defendant Merrill Lynch debited plaintiffs' account for interest, in the net amount of $1,254.33. At the same time, Merrill Lynch held the same amount of shares belonging to plaintiffs, in its cashier's cage in street name. As to all such shares of customers held in margin accounts, Merrill Lynch could, and doubtless did, hypothecate them with banks, lend them to other customers, or otherwise deal with the shares to its own advantage. Such conduct is in accordance with normal practice in the stock brokerage industry and is sanctioned by custom and

sage of long standing.' See our Memorandum of March 18, 1974 filed in this action.

For reasons which are not clear, the interest charges were returned to plaintiffs on August 27, 1970.

Even in the absence of the return of the money, no claim is stated, on these undisputed facts, where a usual and normal sale "short against the box" was carried out in a proper manner, and, incidental thereto the stockbroker enjoyed, arguably, the use of the shares while the sale remained open.

The liability asserted against the defendant New York Stock Exchange is based on the same facts, and is vicarious. Thus, the complaint should be dismissed also as to it.

Based upon the foregoing, and our Memorandum decision dated March 18, 1974, summary judgment is granted to defendant, Merrill Lynch, etc., and the complaint is dismissed as to all parties. The Clerk of the Court shall enter final judgment that all relief shall be denied, pursuant to Rule 58(1), F.R.Civ.P.

So Ordered.

Dated: New York, New York
July 16, 1974

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.